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See Circulars 1758, 1770, 1824, 1862, too

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1800]

PART 259—DISPOSAL OF MATERIALS

APPLICATION FOR PERMIT

OCTOBER 4, 1951.

Section 259.22 is hereby amended to read as follows:

§ 259.22 *Application for permit.* An application for permit, in duplicate, must be made on Form 4-056 and filed in any office or with any employee of the Bureau of Land Management authorized to issue such permit. However, a free use permit on Form 4-1192 may be granted for the removal of not more than three Christmas trees upon oral or written request.

(Sec. 1. 61 Stat. 681; 43 U. S. C. Sup. 1185)

OSCAR L. CHAPMAN,
Secretary of the Interior.

OCTOBER 4, 1951.

[F. R. Doc. 51-12399; Filed, Oct. 16, 1951; 8:45 a. m.]

Published in 16 F.R. 10606 of
October 17, 1951

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See also Cir. 1880
(Replaced by) 11/58

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1801]

PART 254—RECREATIONAL SITES

PAYMENTS FOR LANDS CLASSIFIED AS SUBJECT TO SALE OR LEASE

Section 254.7 (b) is amended to read:

(b) The amount of the purchase price for sales and annual rental for leases shall be fixed by the Director. Payment in installments of the purchase price for sales, with or without interest on the deferred payments, may be authorized by the Director where in his opinion the amount involved and the conditions surrounding the sale justify such action. Upon classification of the land for sale or lease, the applicant will be called upon to make payment of the amount required. Publication of notice of applications to purchase, and of State exchanges, will be required in accordance with the practice governing sales of public lands and State indemnity selections, respectively. So far as applicable, the general regulations of the Department relating to the execution of contracts will be followed in the preparation of leases issued. Any revested lands leased for recreational purposes shall thereafter be exempt from any further claim by the county wherein such leased lands are located for payment of moneys, the equivalent of taxes, as authorized under the acts of August 28, 1937 (50 Stat. 874), and May 24, 1939 (53 Stat. 753). During the existence of any such lease, the timber on the land will not be sold.

(44 Stat. 741, 45 Stat. 429; 43 U. S. C. 869, 869a)

OSCAR L. CHAPMAN,
Secretary of the Interior.

OCTOBER 22, 1951.

[F. R. Doc. 51-12877; Filed, Oct. 26, 1951; 8:45 a. m.]

Published in 16 F.R. 10947 of October 27, 1951

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See Circ. 1896

TITLE 43—PUBLIC LANDS; INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1802]

PART 272—CAREY ACT GRANTS

GRANTS TO STATES FOR IRRIGATION UNDER STATE SUPERVISION; EXTENSIONS OF SEGREGATIONS

Section 272.1 exclusive of footnote 2, and § 272.19 are amended to read:

GRANTS TO STATES FOR IRRIGATION UNDER STATE SUPERVISION

§ 272.1 *Statutory authority.* Under the provisions of section 4 of the act of August 18, 1894 (28 Stat. 422; 43 U. S. C. 641), known as the Carey Act, as amended and supplemented[2] the States are allowed 10 years from the date of the approval by the Director of an application for segregation of the lands in which to irrigate and reclaim the lands. The Director may, however, in his discretion extend the time for a period of 5 years. The Director may, in his discretion, restore to the public domain any lands not irrigated and reclaimed at the end of the 10 year period or any extension thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the Director, the Director may, in his discretion restore the lands to the public domain.

(Sec. 4, 28 Stat. 422, as amended; 43 U. S. C. 641)

EXTENSIONS OF SEGREGATIONS

§ 272.19 *Applications for extensions.* All applications for extensions of time to commence construction of the reclamation works, or to irrigate and reclaim the lands, as outlined in § 272.1, must be submitted to the Director, Bureau of Land Management. Such applications will be entertained only upon the showing of the happening of some event preventing compliance by the State with the requirements within the time allowed, which could not have been reasonably anticipated or guarded against, such as the destruction of irrigation works by storms, floods, or other unavoidable casualties, unforseen structural or physical difficulties encountered in the operations, or errors in surveying and locating needed ditches or canals.

(Sec. 4, 28 Stat. 422, as amended; 43 U. S. C. 641)

OSCAR L. CHAPMAN,
Secretary of the Interior.

OCTOBER 24, 1951.

[F. R. Doc. 51-13005; Filed, Oct. 29, 1951; 8:46 a. m.]

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[2] (No change in footnote 2.)

Published in 16 F.R. 10993 of October 30, 1951

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1803]

PART 273—RAILROAD GRANTS, ETC.

PATENTS

Section 273.74 (a) is amended to read:

§ 273.74 *Patents.* (a) If all be found regular and in conformity with the governing law and regulations, the Director of the Bureau of Land Management will cause a patent to be issued in the name of the grantee under the railroad grant, the carrier paying the customary fees for the writing and issuance of a patent pursuant to a railroad land grant.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

OCTOBER 25, 1951.

[F. R. Doc. 51-13064; Filed, Oct. 30, 1951; 8:45 a. m.]

Published in 16 F.R. 11079 of October 31, 1951

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See 1668

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See No. 1668
1657 + 1821

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1804]

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

LEASING UNDER THE MINERAL LEASING ACT FOR ACQUIRED LANDS

Section 200.7 is completely revised as follows:

§ 200.7 *Leases for future or fractional interests*—(a) *General.* The Director may issue leases for future or fractional interests in mineral deposits covered by the act, whenever in his judgment the public interest will be best served thereby. Noncompetitive leases will be issued only for land not on the known geologic structure of a producing oil or gas field. In leasing lands in which the fractional or other interest owned by the United States is different for different tracts, separate leases may be issued for the different interests or a single lease may be issued with separate development, production and royalty requirements for the different interests. Where the United States owns only a future interest in the mineral deposits in part of the lands covered by an application and has present ownership, either total or fractional, in the mineral deposits in the remainder of the lands, separate leases will be issued, one covering the lands in which the United States owns only future interests, and the other for the other lands. Future interest leases will not be effective until the date or dates that ownership of the future interests covered by the lease become vested in the United States which date or dates will be set forth in the lease. A future interest lease having different effective dates for the respective tracts covered thereby will prescribe a common date for the payment of annual rental or minimum royalty due under the lease with appropriate prorating of periods of less than one year. An application must conform to §§ 200.4 and 200.5 and must be accompanied by the first year's rental as set forth in paragraph (c) of this section.

(b) *Applications for leases for future mineral interests, including future fractional interests.* A future interest lease, whether the future interest of the United States is whole or fractional, will be issued only to an applicant who shows that he owns all or substantially all the present operating rights (either as a mineral fee owner, oil and gas lessee, or as an operator holding these rights under an oil and gas lease) in the lands covered by his application. If the application is made by one claiming ownership of the present mineral interest, it shall also be accompanied by a certified abstract of title, going back to the title of the predecessor in interest of the United States who created such mineral interest, showing such ownership. If made by some one who holds the leasehold or the operating rights under a lease to the present mineral interest, it shall, in addition to the abstract of title, also be accompanied by three certified copies of the lease, or other contract under which such rights were acquired from the owner of the present mineral interest. In lieu of an abstract a certificate of title may be furnished.

(c) *Supplemental agreement as consideration for issuance of lease on future interest in oil and gas deposits.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate Form 4-1155 "Agreement Supplemental to Lease of Oil and Gas Lands Under the Mineral Leasing Act for Acquired Lands". Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable: when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular term of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Applications for fractional interest oil and gas leases, excepting future fractional interests.* An application for a fractional interest lease should include a statement showing whether applicant owns the entire operating rights to the fractional mineral interest not owned by the United States in each tract covered by the application, and if not so owned, the extent of his ownership, the names of the parties who own the remainder of the operating rights to such fractional interests. Ordinarily, the issuance of a lease to an applicant who, upon such issuance, would own less than a majority interest of the operating rights in any such tract, will not be regarded as in the public interest and such application will be rejected.

(Sec. 10, 61 Stat. 915; 30 U. S. C. Sup. 359)

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13718; Filed, Nov. 15, 1951; 8:45 a. m.]

Published in 16 F.R. 11655 of November 16, 1951

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See Circ. 1544, 1622, 1673, & 1777, too

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1805]

PART 199—MINERALS SUBJECT TO LEASE UNDER SPECIAL LAWS

MINERAL LEASES IN LANDS PATENTED FOR PARK OR OTHER PUBLIC PURPOSES; GENERAL PROVISIONS

Section 199.48 is hereby amended to read as follows:

§ 199.48 *Form of lease.* Oil and gas leases will be issued on Form 4-213 and Form 4-1158, with such changes in language as may be required to comply with §§ 199.40 to 199.56, inclusive. Leases for the other minerals named in § 199.47 will be upon the forms prescribed for the leasing of such minerals under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), as amended and supplemented, with necessary deletions and additions conformable to §§ 199.40 to 199.56, inclusive.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 16, 1951.

[F. R. Doc. 51-13922; Filed, Nov. 21, 1951; 8:46 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1806]

PART 74—RIGHTS-OF-WAY

RESERVATIONS OR EASEMENTS FOR PUBLIC HIGHWAYS IN ALASKA

The following text is substituted for §§ 74.28 to 74.33, inclusive:

ESTABLISHMENT OF RESERVATIONS OR EASEMENTS FOR PUBLIC HIGHWAYS IN ALASKA

Sec.
74.28 Reservation for through roads.
74.29 Rights-of-way or easements for feeder roads and local roads.
74.30 Appropriation of lands crossed by roads.
74.31 Homestead settlement or entry, exclusive of a strip reserved for a local road.
74.32 Statement required of applicants as to public roads.
74.33 Adjustment to official survey closing on through road.

AUTHORITY: §§ 74.28 to 74.37 issued under R. S. 2478; 43 U. S. C. 1201.

§ 74.28 *Reservation for through roads.* Public Land Order No. 757 of October 16, 1951, amended Public Land Order No. 601 of August 10, 1949, so as to eliminate provisions affecting feeder roads and local roads. The order which, as amended, applies only to designated through roads, provides:

> Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes.

§ 74.29 *Rights-of-way or easements for feeder roads and local roads.* (a) In addition to establishing the width of the through roads, reserved as set forth in § 74.28, Order No. 2665 of October 16, 1951 of the Secretary of the Interior also established rights-of-way or easements for highway purposes covering the lands embraced in feeder roads and local roads equal in extent to the width of such roads, as set forth in paragraphs (b) and (c) of this section.

(b) Feeder roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishook Junction to Wasilla to Knik Road, Slana to Nebesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(c) Local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

§ 74.30 *Appropriation of lands crossed by roads.* (a) The reservation for through roads made by public land order No. 601 of August 10, 1949, as amended, operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws. Unless under the law or regulations such right or claim may embrace non-contiguous land, a right or claim to public land in the Territory initiated on or after August 10, 1949, and abutting on public land reserved for a through road, must be restricted to land on one side of the withdrawn area.

(b) Subject to paragraph (a) of this section public land on either side of the area reserved for through roads, both surveyed and unsurveyed, if otherwise available, may be included in claims extending up to but not including any part of the reserve. Where the land has been surveyed under the rectangular system and the surveys have not been closed on the reserved area, applications may be filed and entries allowed for portions of the legal subdivisions outside of the reserved area without awaiting additional surveys. Where the surveys have been closed on the reserved area, the land must be identified in the terms of such surveys. Settlements on unsurveyed public lands must conform to § 65.2, of this chapter so far as practicable.

(c) Public land crossed by a feeder road or a local road may be appropriated under any applicable public land law, subject to the roadway right-of-way or easement. No deduction in the area chargeable to the claim will be made on account of the area included in the public highway right-of-way or easement. So long as the land is used for public highway purposes, complete jurisdiction thereover for all highways and highway-related purposes will remain in the Federal Government. If the highway is abandoned, such jurisdiction will terminate without action by the Federal Government; where the land crossed by the highway has passed into private ownership.

§ 74.31 *Homestead settlement or entry, exclusive of a strip reserved for a local road.* Where prior to October 16, 1951, a homestead settlement or entry was made, exclusive of a strip reserved for a local road, under the regulations then in effect (15 F. R. 1874, 43 CFR 1950 Supp. 74.29) the claim may stand in that form, or, in the option of the claimant, it may be amended to include the reserved strip, provided the total area involved does not exceed the total area permitted by law.

§ 74.32 *Statement required of applicants as to public roads.* Every applicant for public lands in Alaska whose right or claims was initiated on or after August 10, 1949, will be required to state in his application, or in a written statement furnished with the application, whether or not the land applied for is crossed by a public road. If it is, such road must be identified by name or otherwise.

§ 74.33 *Adjustment to official survey closing on through road.* Every application made for public land abutting on the area reserved for a through road not described in the terms of an official plat of survey closing on that area, will be subject to adjustment, both as to description and area, after such an official survey has been made.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

R. D. SEARLES,
Acting Secretary of the Interior.

DECEMBER 3, 1951.

[F. R. Doc. 51-14553; Filed, Dec. 7, 1951; 8:45 a. m.]

Published in 16 F.R. 12397 of December 8, 1951

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See also 1882

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular 1807

PART 160—GRAZING LEASES

Sec.
160.1 Statutory authority.
160.2 Definitions.
160.3 Classes of applicants; preference rights.
160.4 Qualifications of applicants.
160.5 Application and lease.
160.6 No right conferred by application, prior to lease.
160.7 Protests.
160.8 Leases of withdrawn or reserved lands.
160.9 Action on defective application or where the lands applied for are not subject to grazing leasing.
160.10 Disposition of protests and conflicting applications.
160.11 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.
160.12 Leased lands subject to classification and disposition; compensation to lessee for loss of lands and for improvements.
160.13 Access to leased lands; temporary closing of leased area.
160.14 Rental.
160.15 Term of lease.
160.16 Application for renewals.
160.17 Construction and maintenance of improvements.
160.18 Removal of improvements.
160.19 Cancellation of lease.
160.20 Inspection of leased premises.
160.21 Assignment of lease; subleases.
160.22 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.
160.23 Appeals; filing.

AUTHORITY: §§ 160.1 to 160.23 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

SOURCE: §§ 160.1 to 160.23 contained in circular 1760, 15 F. R. 4504, July 15, 1950, 15 F. R. 5141 Aug 9, 1950, except as noted following sections affected.

§ 160.1 *Statutory authority.* Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only. Grazing leases for other public lands intermingled with the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant lands which are located west of the Cascade Mountain Range Divide, or in and west of Range 5 East, or west of Klamath Lakes and Link River in Ts. 36 to 41 S., Rs. 6 to 9 E., inclusive, Willamette Meridian, Oregon, will be issued pursuant to and will be governed by the provisions of Part 115 of this chapter.

§ 160.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional administrator" means the proper regional administrator, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing Officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field Office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D. C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 160.3 *Classes of applicants; preference rights.* The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less[1] for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[2]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 160.4 *Qualifications of applicants.* An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided,* That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 160.5 *Application and lease.* An application for lease shall be executed in triplicate on combined application and lease form (4-721) and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.[3] The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

§ 160.6 *No right conferred by application, prior to lease.* The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other

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[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

[2] By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

REPRINT, December 18, 1951, of Circular 1760, July 11, 1950, as amended by Circular No. 1779, January 3, 1951.

disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 160.7 *Protests.* Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest, and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 160.8 *Leases of withdrawn or reserved lands.* Leases may be issued for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[4] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with the regulations, § 295.7 (c) of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed by the Director of the Bureau of Land Management for the protection and use of the land for the purpose for which it was withdrawn or reserved.

§ 160.9 *Action on defective application or where the lands applied for are not subject to grazing leasing.* Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the aplication.

§ 160.10 *Disposition of protests and conflicting applications.* (a) The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(b) In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands.

(c) After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 160.11 *Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.* The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 160.12 *Leased lands subject to classification and disposition; compensation to lessee for loss of lands and for improvements.* (a) Lands embraced in a grazing lease are subject to classification and disposition under the provisions of sections 7 and 14 of the act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws: *Provided,* That before any application for such classification and disposition is allowed, evidence is furnished that the applicant has agreed to compensate the lessee for any grazing improvements placed on the lands under the authority of the lease or permit in an amount to be mutually agreed upon. If the parties are unable to agree as to the amount and time for payment for such improvements, the amount and time of payment shall be fixed by the signing officer. The failure of the applicant to pay the lessee, in accordance with the agreement or the amount fixed by the signing officer within the time allowed for payment, shall be just cause for cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

(c) The holder of a grazing lease shall be compensated, for the loss resulting from the use of lands embraced in the lease for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the department or agency of the Federal Government making such use.

§ 160.13 *Access to leased lands; temporary closing of leased area.* (a) The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

(b) The regional administrator, in his discretion, may close temporarily to grazing portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 160.14 *Rental.* The lessee shall pay the lease rental in the amount and manner specified in the lease. The rental shall be computed in conformity with the following rate tabulations, unless for sufficient reasons a different rate is authorized by the Director:

GRAZING RENTAL RATE TABULATION

Estimated grazing capacity in acres per animal unit month	Estimated grazing capacity in animal units yearlong per section	Yearly lease-rate per acre
107.00	0.5	$0.001
53.00	1.0	.002
36.00	1.5	.003
27.00	2.0	.004
21.00	2.5	.005
18.00	3.0	.007
15.00	3.5	.008
13.00	4.0	.009
12.00	4.5	.010
11.00	5.0	.011
9.00	6.0	.013
7.50	7.0	.016
6.50	8.0	.018
6.00	9.0	.020
5.50	10.0	.022
5.00	11.0	.024
4.50	12.0	.027
4.00	13.0	.030
3.75	14.0	.032
3.50	15.0	.034
3.25	16.0	.037
3.00	17.0	.040
2.75	19.0	.044
2.50	21.0	.048
2.25	24.0	.053
2.00	27.0	.060
1.75	30.0	.069
1.50	36.0	.080
1.25	43.0	.096
1.00	53.0	.120
0.50	107.0	.240
0.25	213.0	.480

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[4] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with the principles of section 15 leases, under authority of subsection (1) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U. S. C. sec. 501).

One cow or one horse or five sheep or five goats constitute one animal unit. The rental charge will not in any case be fixed at less than $1.00 per annum. The rental may be adjusted to reflect changes in approved rates at the end of each three-year period to apply to the rental charges for the next three-year period.

/Circ. 1779, Jan. 3, 1951/

§ 160.15 *Term of lease.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

§ 160.16 *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on the combined application and lease form (4–721) at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

§ 160.17 *Construction and maintenance of improvements*—(a) *Permit required.* After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and and maintenance of fences.

(b) *Applications for permits and cooperative agreements.* Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on Form 4–1115 and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on Form 4–1119.

(c) *Action on the application.* Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 160.18 *Removal of improvements.* (a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 160.17 (b). The amount of such compensation shall be determined in accordance with the procedure set forth in § 160.12. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period, such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 160.19 *Cancellation of lease.* If the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and canceled by the signing officer.

§ 160.20 *Inspection of leased premises.* The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 160.21 *Assignment of lease; subleases.* No part of the leased lands may be subleased. The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form (4–721) properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 160.22 *Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.* (a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may ascertain from the signing officer the status of the grazing lease and other pertinent information relating thereto.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on combined application and lease form (4–721). When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan, subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on combined application and lease form (4–721) to be recognized as the new lessee. If, in selling the property, the lending agency takes back a mortgage on the property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the signing officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any action taken affecting the lease.

§ 160.23 *Appeals; filing.* An appeal from any decision rendered pursuant to §§ 160.1 to 160.23, inclusive, may be taken to the Director and the Secretary, in accordance with the rules of practice (Part 221 of this chapter). The appeal should be filed with the officer who rendered the decision.

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Replaced by Circular 1861 (11/5/58)

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Obsolete Replaced by 1843

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1808]

PART 132—SOLDIERS' ADDITIONAL HOMESTEAD RIGHTS

PART 232—DESERT-LAND ENTRIES

ALLOWANCE OF APPLICATION AND ISSUANCE OF FINAL CERTIFICATE AND COLLECTION OF PURCHASE MONEY AND FEES, ISSUANCE OF FINAL CERTIFICATE

Obsolete See Circ. 1861

In order to eliminate requirements that final certificates be issued in duplicate, §§ 132.13 and 231.61 (a) are amended as follows:

1. Section 132.13 is amended to read:

§ 132.13 *Allowance of application and issuance of final certificate.* A soldier's additional application does not segregate the land nor prohibit the filing of other applications for such land until after its allowance, pursuant to its acceptance by the Washington office. The entry and final certificate should bear the same date. The manager after collecting the fee and the original and final commissions will issue final certificate.

(R. S. 2478; 43 U. S. C. 1201)

2. Section 232.61 (a) is amended to read:

§ 232.61 *Collection of purchase money and fees; issuance of final certificate.* (a) At the time of making final proof the claimant must pay to the manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915, as amended and supplemented. (See §§ 232.49 and 232.55.) The manager will issue a receipt for the money paid, and if the proof is satisfactory, he will issue final certificate.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 5, 1952.

[F. R. Doc. 52-403; Filed, Jan. 10, 1952; 8:48 a. m.]

Published in 17 F.R. 346 of January 11, 1952

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Land Office Billings

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Replaced by Circ 2165

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1809]

PART 295—WITHDRAWALS AND RESTORATIONS

PROCESSING OF SIMULTANEOUS APPLICATIONS

Section 295.8 under the centerhead "Simultaneous Applications" is amended to read:

§ 295.8 *Processing of simultaneous applications.* All applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening is involved, the applications will be treated as having been filed simultaneously if they are received by a land office (or, if there is no such office in the State, by the Washington Office of the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation, applications which are filed simultaneously will be processed in accordance with the following rules:

(a) All such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.

(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.

(c) All applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 10, 1952.

[F. R. Doc. 52-569; Filed, Jan. 15, 1952; 8:47 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1810]

PART 80—TOWN SITES[1]

INDIAN POSSESSIONS IN TRUSTEE TOWNS; NATIVE TOWNS

A footnote as indicated below is added to Part 80, and the following text is substituted for §§ 80.18 to 80.27, inclusive:

Sec.
80.18 Statutory authority.
80.19 Administration of Indian possessions in trustee towns.
80.20 Application for restricted deed.
80.21 Administration of native towns.
80.22 No payment, publication or proof required on entry for native towns.
80.23 Native towns occupied partly by white occupants.
80.24 Provisions to be inserted in restricted deeds.
80.25 Sale of land for which restricted deed has issued.
80.26 Application for unrestricted deed.
80.27 Determination of competency or noncompetency; issuance of unrestricted deed.

AUTHORITY: §§ 80.18 to 80.27 issued under 44 Stat. 630; 48 U. S. C. 355d. Interpret or apply 44 Stat. 629, 630, 62 Stat. 35; 48 U. S. C. 355a, 355b, 355c, 355e.

§ 80.18 *Statutory authority.* The act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355d) provides for the town-site survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee town-sites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The act of February 26, 1948 (62 Stat. 35; 48 U. S. C. 355e), provides for the issuance of an unrestricted deed to any competent native for a tract of land claimed and occupied by him within any such trustee town-site.

§ 80.19 *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee town-sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 48 U. S. C. 355), and for which the town-site trustee has closed his accounts and been discharged as trustee , and as to such possessions in other trustee town-sites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

§ 80.20 *Application for restricted deed.* A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee town-site and who desires to obtain a restricted deed for such tract should file application therefor on Form 4–231, with the town-site trustee.

§ 80.21 *Administration of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926 (44 Stat. 630; 48 U. S. C. 355c), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

§ 80.22 *No payment, publication or proof required on entry for native towns.* In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town-sites will not be required.

§ 80.23 *Native towns occupied partly by white occupants.* Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

§ 80.24 *Provisions to be inserted in restricted deeds.* The town site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

§ 80.25 *Sale of land for which restricted deed has issued.* When a native possessing a restricted deed for land in a trustee town site, issued under authority of the act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355d), desires to sell the land, he should execute a deed on Form 4–232a prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the town-site trustee in Alaska. The town-site trustee will forward the deed to the Area Director of the Alaska Native Service who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Alaska Native Service, through the town-site trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

§ 80.26 *Application for unrestricted deed.* Any Alaska native who claims and occupies a tract of land in a trustee town site or is the owner of land under a restricted deed issued under the act of May 25, 1926 (44 Stat. 629; 48 U. S. C. 355a–355e), may file an application for an unrestricted deed pursuant to the act of February 26, 1948 (62 Stat. 35; 48 U. S. C. 355e), with the town-site trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Alaska Native Service.

§ 80.27 *Determination of competency or noncompetency; issuance of unrestricted deed.* (a) Upon a determination by the Alaska Native Service that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the town-site trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the town-site trustee shall be subject to a right of appeal to the Director, Bureau of Land Management, and to the Secretary of the Interior, in accordance with the rules of practice (43 CFR Part 221).

(b) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs, within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

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[1] The Regional Administrator, Bureau of Land Management, Anchorage, Alaska, has been designated as the town-site trustee for all townsites in Alaska established under authority of §§ 80.2 to 80.27, inclusive.

(c) Except as provided in this section, the town-site trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

R. D. SEARLES,
Acting Secretary of the Interior.

JANUARY 19, 1952.

[F. R. Doc. 52-951; Filed, Jan. 24, 1952; 8:45 a. m.]

Published in 17 F.R. 770 of January 25, 1952

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THE FEDERAL RANGE CODE
FOR GRAZING DISTRICTS

1811

UNITED STATES
DEPARTMENT OF THE INTERIOR
OSCAR L. CHAPMAN, Secretary

BUREAU OF LAND MANAGEMENT
MARION CLAWSON, Director

March 3, 1849

February, 1952 *Washington 25, D. C.*

PREFACE

Range management in grazing districts must conform to the Federal Range Code which constitutes the rules and regulations approved by the Secretary of the Interior in accordance with the provisions of the Taylor Grazing Act. Much progress has been accomplished since 1934 in the refinement of the regulations for grazing district administration. Procedures have been established and revised from time to time as experience showed that the Code should be changed to make more effective the management of the range resources in the grazing districts.

Much recognition should be given to the Grazing District Advisory Boards for the time and energy that they have contributed in studying the range management problems in grazing districts, and for their recommendations to the Secretary of the Interior with respect to provisions needed in the Code to make it practical and workable on the range. In the revisions approved by the Department August 31, 1949, there was included a provision for State Advisory Boards and a National Advisory Board Council. In addition to serving on their respective grazing district Advisory Boards, they shall consider and make recommendations on grazing administration policies or problems of state and national scope, respectively.

Attorneys know the regulations as the Federal Range Code for Grazing Districts, 43 CFR, Part 161. Livestock operators know the regulations by the short title, the Federal Range Code.

Marion Clawson

Director

Circular No. 1811

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.
161.2 Definitions.
161.3 Qualifications of applicants.
161.4 Classification of base properties.
161.5 Rating and classification of Federal range.
161.6 Issuance of licenses and permits.
161.7 Transfers of base properties and licenses or permits.
161.8 Fees; time of payment; refunds.
161.9 Procedure in applications, hearings, and appeals.
161.10 General rules of the range.
161.11 Procedure for enforcement of rules and regulations.
161.12 District Advisory Boards.
161.13 Local associations of stockmen.
161.14 Construction and maintenance of improvements on the Federal range.
161.15 Special rules for grazing districts.
161.16 Penal provision.
161.17 Saving clause.

Reprint of the Federal Range Code for Grazing Districts, as amended. Sections 161.6 (c)(10), (11) and (13), 161.8(b) and (c), 161.9(a), (c) and (f), 161.11(d), and 161.12(j), (k) and (l) were amended by Circular No. 1736 of August 31, 1949. The note following section 161.8(b) was amended by Circular No. 1780 of January 3, 1951.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

(a) Purposes; general requirements. Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the public domain will be required of all users.

(b) Preference applicants. Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner provided in this section. Provision will be made for other applicants so far as Federal range remains available.

(c) Permits; temporary licenses; termination; revocation. Permits within the meaning of section 3 of the act may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. During the period prior to the issuance of permits, the issuance of temporary licenses will be continued. Upon the issuance of a permit within any district or portion thereof, any outstanding license or part thereof which has been granted on the basis of the qualifications on which the permit is based will be terminated. Licenses and permits will be revocable for violations of the terms thereof or for a violation of any provision of the Federal Range Code for Grazing Districts, as provided in this part. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b)

161.2 Definitions. Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management, unless the context otherwise requires:

(a) The act means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315--315m, 315n--315o-1), and all amendments thereto.

(b) The Federal Range Code for Grazing Districts means all of the rules and regulations pertaining to the administration of grazing districts.

(c) Federal range means land owned, leased, or otherwise controlled by the United States and administered by the Bureau of Land Management, Provided, That land under the control of another agency and administered by the Bureau of Land Management under cooperative agreement may be excluded from the scope of this definition by the agreement.

(d) Property means privately owned or controlled land or water used in range livestock operations.

(e) Base property means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(f) Forage land means land the principal use of which is the production of natural or cultivated feed for livestock.

(g) Land dependent by use means forage land which is of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the 5-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years in connection with substantially the same part of the public domain, now part of the Federal range, except that in any area placed within a grazing district after June 28, 1938, or in any area added to an existing grazing district after that date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a base property or properties during the priority period in such manner as would, in the absence of other factors, serve to invest the property with the attribute of dependency by use, but such livestock operation subsequently ceased using such property or properties and used other base property or properties in such manner as to invest them also with dependency by use, only the latter property or properties shall be considered as dependent by use unless the former are dependent by use by reason of use by another livestock operation, Provided further, That in no event shall any land be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year from the date when the public land used in creating the dependency by use first became a part of a grazing district, except that in cases in which the lands used in creating dependency by use of a base property became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date.

The extent of the dependency by use of land shall be subject to the following:

(1) The dependency by use in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the public lands which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the dependency by use is diminished by withdrawal, appropriation, selection, or otherwise, the dependency by use shall diminish proportionately.

(3) Whenever dependency by use of more than one base property was created by the use of all or a part of certain range which was used jointly or at different seasons of the year by one or more other livestock operations in such a manner as to invest another base property or properties with the attribute of dependency by use, the relative dependency by use of each of the properties shall be proportionate to the average annual use made of the range by each of the operations.

(h) Land dependent by location means forage land which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(i) Animal-unit month, as applied to lands that are base properties, means the amount of natural or cultivated feed necessary for the complete sustenance of one cow for a period of one month; as applied to Federal range, it means that amount of grazing privileges represented by the grazing of one cow for a period of one month. For the purpose of this definition, one cow will be considered the equivalent of one horse or five sheep or five goats.

(j) Carrying capacity means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(k) Full-time water means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(l) Prior water is water which, during all or a substantial part of the five-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used to service certain public range within the service area of the water for a livestock operation that was established, permanent, and continuing, and which, during the period of such use, normally involved the grazing of livestock on the same areas of public land for a certain period or periods of each year, except that in any area placed within a grazing district or added to an existing district after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, serve to invest such water with the attribute of priority, but such livestock operations subsequently ceased using such water or waters and used other water or waters in such manner as to invest them also with priority, only the latter water or waters shall be considered as prior unless the former are prior because of use by another livestock operation, Provided further, That in no event shall any water be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district, except that in cases wherein such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

The extent of the priority of water shall be subject to the following:

(1) The priority in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the priority is diminished by withdrawal, appropriation, selection, or otherwise, the priority of the water shall diminish proportionately.

(m) Service area means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(n) Free-use applicant means an applicant who resides in the immediate neighborhood of Federal range and who owns livestock kept for domestic purposes. "Livestock kept for domestic purposes" means livestock whose products are consumed or whose work is used directly and exclusively by the family of the applicant. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.3 Qualifications of applicants.

(a) Definition of qualifications. An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has filed a declaration of intention to become a citizen: Provided, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any

satisfactory reason for such failure, shall be disqualified to receive a license or permit or any renewal thereof until he has actually attained citizenship, and any existing license or permit held by such person shall become void at the end of the grazing season during which the disqualification arises, or

(3) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under subparagraph (2) of this paragraph.

(b) Effect of disqualification arising through operation of law. Notwithstanding the above provisions of this section, the acquisition of rights in base property by an unqualified applicant through operation of law or testamentary disposition will not affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, to the extent based on such property, for a period of two years after such acquisition. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

161.4 Classification of base properties. For the purpose of determining the proper use of the base properties of all applicants and their relative dependence upon the Federal range, land and water conditions and other factors affecting livestock operations in the area will be considered and determined according to customary use and best practices for good range management. Base properties will be classified as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

(sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.5 Rating and classification of Federal range.

(a) Carrying capacity; seasons and maximum annual period of use. For the purpose of stabilizing the livestock industry, determining the proper use of the Federal range, and other purposes, the carrying capacity of each administrative unit or area in a grazing district will be rated, and each will be classified for the proper season, or seasons, if necessary, of its use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range lying therein during any one year.

(b) Wildlife; allowance for maintenance. In each grazing district a sufficient carrying capacity of Federal range will be provided, following consultation with and the advice of wildlife interests, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) Segregation of ranges for particular kinds of livestock. When the proper use of the Federal range or an orderly administration of the act requires it, certain areas may be designated for use exclusively by a certain kind or class of livestock. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.6 Issuance of licenses and permits.

(a) Free-use licenses and permits. Free-use licenses or permits first will be issued to free-use applicants for not to exceed the number of livestock kept for domestic purposes. Such livestock shall be grazed on Federal range in the immediate neighborhood of the residence of the licensee or permittee. (Sec. 5, 48 Stat. 1271; 43 U.S.C. 315d)

(b) Regular licenses and permits; order of issuance; number of livestock. Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(1) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(2) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(3) To other applicants, licenses or permits for the number of livestock for which range is available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

After licenses or permits have been issued on the basis of the foregoing, any licensee or permittee may, within the discretion of the range manager, and on written order by him, be allowed to use the amount of Federal range grazing privileges represented by his license or permit over any period of time within the season or seasons for which the Federal range is classified as proper for use, Provided,

(i) Such period does not exceed the maximum period of time for which any licensee or permittee is allowed to use the Federal range during any one year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range; and

(iv) Such use will not adversely affect other licensees or permittees. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

(c) Terms and conditions. The issuance and continued effectiveness of all regular licenses and permits will be subject to the following conditions and requirements:

(1) No license or permit will be issued to any applicant unless he is able to show that he possesses adequate feed to support his licensed or permitted livestock during the period of time for which they are to be off the Federal range.

(2) No license or permit will provide for the grazing of livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the carrying capacity of the range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately.

(6) If at any time during the life of a license or permit the holder thereof ceases to make substantial use of his base property in connection with his year-round livestock operation, the license or permit will be subject to a proportionate reduction.

(7) If at any time during the life of a license or permit the holder thereof loses ownership or control either of all or a part of his base property or of all or a part of such other lands or grazing privileges as are necessary to his year-round livestock operation, and fails within a reasonable time, as directed by the range manager after submission of the matter to the advisory board for recommendation, to obtain ownership or control of other base property, lands or grazing privileges sufficient to insure such a year-round operation, the license or permit will be subject to a proportionate reduction.

(8) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(9) In the event of failure for any two consecutive years either to offer a base property in an application for a license or permit, or to accept a license or permit offered pursuant to such an application, such base property will lose its dependency by use or priority.

(10) The failure for any two consecutive years to make substantial use of the grazing privileges, authorized under an accepted license or permit, may result in the loss of the dependency by use or priority of the base property in proportion to the failure to use such license or permit.

(11) Non-use, in whole or in part, of a license or permit may be authorized by the range manager upon application by the licensee or permittee, after reference to the advisory board for recommendation, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit because of a violation of any of the provisions of the Federal Range Code for Grazing Districts may result in the loss of the dependency

by use or priority of the base property upon which the license or permit is based. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

(13) In order to stabilize livestock operations dependent upon the Federal range, no readjudication of any license or permit will be made on the claim of any applicant or intervener with respect to the dependency by use or priority of the base property where such qualification, upon which the license or permit was issued, has been recognized for a period of three years or more, except in a case where such qualification would otherwise be subject to adjustment under the provisions of this part.

(d) Applicants having more than one class of property; reductions; allotments; agreements. Nothing contained in this section will prevent an applicant who owns or controls properties in more than one class from having such properties considered separately in the order and manner set forth in this section. If necessary to reach the carrying capacity of any parts of the Federal range after licenses or permits have been issued, reductions on an equal percentage basis will be imposed on licensees or permittees so far as their grazing activities involve the use of such parts. Reductions in all cases will be made by reducing the numbers of livestock or the time on the Federal range area involved, or by both methods, Provided, That the regional administrator may recommend, for the approval of the Secretary of the Interior, a limit below which no license or permit in that area will be reduced. Allotments of Federal range will be made to licensees or permittees when conditions warrant, and divisions of the range by agreement or by former practice will be respected and followed where practicable. Increases in carrying capacity will be participated in by existing licensees and permittees to the extent of their respective qualifications. Licenses or permits to use any range available thereafter may be granted to other applicants. (Sec. 2, 48 Stat.1270; 43 U.S.C. 315a)

(e) Administration of lands additionally available. Any land added to a grazing district, or otherwise made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4), the revocation of a withdrawal, or the cancellation or relinquishment of a homestead entry or claim, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b) (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4)

(f) Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940. Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179: 50 U.S.C. 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in triplicate, the original of which shall be sworn to before a notary public or other officer authorized to administer oaths in the State in which the applicant resides, or before the officer in immediate command and holding a commission in the branch of the Service in which the applicant is engaged, which shall set forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, such a temporary license shall be revocable as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension or termination of a license or permit may be appealed by the applicant, licensee, or permittee to an examiner of the Bureau of Land Management, and from his decision to the Director of the Bureau and to the Secretary of the Interior, respectively. The procedure in such appeals shall conform as nearly as practicable to the procedure prescribed in section 161.9. (Secs. 2, 3, 9, 48 Stat. 1270, 1271; 43 U.S.C. 315a, 315b, 315h) (Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561, 567)

161.7 Transfers of base properties and licenses or permits.

(a) Transfer of base property: effect. A transfer of a base property, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if otherwise properly qualified, to all or to such part of a license or permit as is based on the property transferred, and the original license or permit will be terminated or decreased by such transfer. In any instance in which a transfer, or a different vesting in any manner, of a leasehold interest in land may result in an interference with the stability of livestock operations or with proper range management, such land will lose its dependency by use or dependency by location, as the case may be, upon a find to that effect by the regional administrator, after reference of the matter to the district advisory board for its recommendation.

(b) Transfer of a license or permit; limitations; effects; consent of owner or encumbrancer. Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow a license or permit based on ownership or control of land to be transferred to other land or a license or permit based on ownership or control of water to be transferred to other water within the same service area, Provided, That such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, Provided further, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the base property from which the transfer is to be made, except that when the applicant for such transfer is a lessee without whose established livestock operations such property would not have dependency by use or priority, such consent will not be required. Upon the allowance of a transfer under this paragraph, the base property from which the transfer is made shall lose its dependency by use or priority to the extent of the license or permit transferred.

(c) Transfer of dependency by use on same land. Whenever a licensee or permittee owns or controls land dependent by use which has a carrying capacity in excess of that necessary for the support of the licensed or permitted livestock during that period of the year for which they are to be kept on such land, the excess land may be disposed of or may be used for purposes other than the support of such livestock; upon application by the licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow the dependency by use allocable to such land to be transferred to that part which continues to be used for the support of such livestock Provided, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the land from which the transfer is to be made. Upon the allowance of a transfer under this paragraph, the land from which the transfer is made shall lose its dependency by use. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.8 Fees; time of payment; refunds.

(a) Free-use licenses and permits. No fee will be charged for the issuance of a free-use license or permit.

(b) Regular licenses and permits. Each regular licensee or permittee will be charged for each head of livestock, for each month covered by the license or permit, a grazing fee for the use of the range and a range improvement fee. Range improvement fees, upon the recommendation of the district advisory board and approval of the Secretary, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any governmental agency--State or Federal, or any person, association, or corporation. Grazing and range improvement fees will be assessed on the basis of semi-monthly periods, beginning on the first and sixteenth day of the month and ending, respectively, on the fifteenth and the last day of the month. All livestock six months of age or over and allowed on the Federal range, will be counted at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No grazing or range improvement fees will be charged for livestock under six months of age. A minimum annual charge of $1.00 will be made on all regular licenses or permits.

Note: In accordance with the provisions of section 161.8 (b) of the Federal Range Code for Grazing Districts (Circular 1736, 14 F. R. 5509, September 7, 1949) notice is hereby given that effective May 1, 1951; and pursuant to the act of June 28, 1934 (48 Stat. 1275) as amended, a grazing fee of ten cents per animal unit month and a range improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the license or permit, as follows:

1. Grazing fee - 10 cents per head for cattle and horses,
   2 cents per head for sheep and goats.

2. Range improvement fee - 2 cents per head for cattle and horses,
   two-fifths cent per head for sheep and goats.

Provided, That as to licenses or fee notices issued prior to January 15, 1951, no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

This notice will not prevent the fixing of a different fee in appropriate cases, in accordance with the provisions of section 161.8 (b) of the Federal Range Code for Grazing Districts.

(c) Crossing permits. Unless notice is otherwise given, a fee of one-half of a cent per head per day, for cattle and horses, and one-tenth of a cent per head per day, for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes: Provided, That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge: Provided further, That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916 (39 Stat. 862; 43 U.S.C. 300).

(d) Payment of fees; reduction or increase in numbers; extension of periods of use. All fees for crossing permits shall be paid at the time of the issuance of the permit. Payments of fees for regular licenses or permits shall be made prior to the beginning of each grazing period shown on the license or permit. Licenses or permits will be effective only when all fees due thereunder have been paid. No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code for Grazing Districts has been made. Upon application by a transferee of any property or part thereof on the basis of which a license or permit has been issued, a new license or permit representing that part of the grazing privileges to which he may thereby become entitled shall be issued to him. In case of such transfer, the transferor shall not be entitled to a refund of any portion of the fees that have been properly paid and that are applicable to the period subsequent to the transfer.

A licensee or permittee will be required to make payment of fees in accordance with the terms of the license or permit unless he notifies the range manager in writing, more than thirty days before the effective date of any grazing period shown, that he desires to make temporary use of the grazing privileges in a manner other than that shown in the license or permit. Such change will be allowed if due to annual fluctuations ordinarily occurring in livestock operations or to the necessity of conserving or protecting the range. When the requested change is due to financial reasons, such as foreclosure, or other reasons beyond the licensee's or permittee's control, it may be granted for one year or longer, after reference to the advisory board for recommendation, and the approval of the range manager. Fee notices in each case will issue accordingly.

Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow an extension of the applicant's period or periods of use of the Federal range during any year or season thereof. A receipted supplemental fee notice covering the additional grazing privileges will constitute authority to use the range for the extended period.

(e) Refunds. No refund of fees properly paid will be made because of a failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period as long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be made under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.).

(3) When a license or permit is suspended under section 501 (2) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187; 50 U.S.C. 561 (2)), any fees that have been paid for the period of suspension will be refunded and any fees that are or that may become due for such period will be remitted. (Secs. 3, 5, 6, 48 Stat. 1270--1272; 43 U.S.C. 315b, 315d, 315e)(Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561 (2), 567)

161.9 Procedure in applications, hearings and appeals.

(a) Filing and consideration of applications; recommendations; service of notice. Each year the regional administrator will set a date for each district in his region prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the range manager or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard: Provided, however, That in any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may, in its discretion, decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) Hearing of protests; reconsideration by advisory board; service of notice. At the dates and places fixed for hearing protests any party in interest may appear, either in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant either personally by the range manager or such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notices will constitute the range manager's final decisions for purposes of appeal.

(c) Allowance or rejection of application by the range manager; modification; service of notice; appeal to examiner; intervention. The range manager is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the range manager or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner. The appeal must be filed with the regional administrator within fifteen days following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the regional administrator of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

The range manager, or any intervener may, within twenty days after receipt of notification that an appeal has been filed, file with the regional administrator, after having served a copy on the appellant, a written motion that the appeal be dismissed for the reason that all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The regional administrator shall advise all other parties in interest that such a motion has been filed.

The appellant, or any other party in interest, may file a written answer within twenty days after service of motion upon him. The regional administrator shall transmit the motion, the proofs of service, and the answers to the examiner who shall rule on the motion, and, if the motion is sustained, dismiss the appeal without prejudice to the appellant's privilege to appeal to the Director, pursuant to paragraph (j) of section 161.9.

(d) Cancellation of licenses or permits; service of appeal to examiner. Licenses or permits will be subject to cancellation to the extent that they have been improperly issued. In any case in which it shall appear to the Bureau of Land Management that a license or permit confers grazing privileges in excess of those properly allowable under the act and the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such cancellation should not be made final. Such notice will set forth fully the reasons for the proposed cancellation and will be served on the licensee or permittee either personally by the range manager or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. In case of failure of the licensee or permittee to show cause within the fifteen days allowed, the license or permit will be canceled to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case. If the range manager is not satisfied that sufficient causes have been shown, he will notify the licensee or permittee that the cancellation will be made final unless an appeal to an examiner of the Bureau of Land Management is filed within fifteen days from receipt of notice. Such notice will be served on the licensee or permittee either personally by the range manager of by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. The appeal must be filed with the regional administrator and shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. So far as practicable, the appeal thereafter will follow the procedure prescribed in the following paragraphs of this section, except that any decision by the range manager or the examiner on a matter arising under this paragraph will not become effective pending the disposition of a timely appeal to the examiner, the Director or the Secretary of the Interior, as the case may be.

(e) Fixing of place and date for hearing before examiner on appeal; notice. Upon the filing of an appeal and specifications of error, the regional administrator will notify the Chief Examiner, naming a place within or near the district at which a hearing will be held. The Chief Examiner will then advise the regional administrator of the date of hearing, which will be not less than ten days after the date of the filing of the appeal, and the regional administrator thereupon will notify the appellant, and all parties who may be directly affected by the decision on the appeal, of the time and place of hearing, which shall be held by an examiner designated by the Director of the Bureau of Land Management.

(f) Authority of examiner. The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses, to administer oaths, to call and question witnesses, and to make findings of fact, conclusions of law, and a decision. The examiner also shall have authority to take or to cause depositions to be taken whenever the ends of justice would be served thereby, in accordance with the procedure for taking depositions set out in the Rules of Practice (43 CFR Part 221). The examiner may stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges, and the same parties or their predecessors in interest. The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted because of the absence of witnesses only in accordance with the Rules of Practice (43 CFR Part 221). In other cases continuances may be granted only when the ends of justice will be served thereby.

Continuances will not be granted unless it appears that they are clearly justified and that a timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the other parties. The other parties shall have five days to file an objection to the continuance if they so desire. The examiner will then rule on the request, and, if the request is granted, set a new date for the hearing.

(g) Conduct of hearing before examiner. The appellant, the range manager, and recognized interveners will stipulate as far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented and issues which clearly appear to be unnecessary to a proper disposition of the case will be excluded; Provided, That the party asserting such an issue may state briefly for the record the substance of the proof which otherwise would be offered in support of the issue. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties. The range manager, or his representative, will then state the grounds of the decision from which the appeal has been taken, together with such explanation as may be deemed necessary, and may call and examine witnesses on the issues involved. Upon the conclusion of this testimony the appellant shall present his case, following which recognized interveners may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy. All oral testimony shall be under oath, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. Objections to evidence will be ruled upon by the examiner and exceptions duly noted, and such exceptions will be considered upon an appeal from the decision of the examiner. In noting an exception to a ruling sustaining an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof.

(h) Witness fees. Under the subpoena issued a witness will be entitled to a witness fee of $1.50 per day for the time in attendance at the hearing and the time necessarily spent in travel from his residence to the place of hearing and return, plus five cents per mile for the distance necessarily traveled. Witnesses who attend hearings so far removed from their residences as to prohibit return thereto from day to day will be allowed a per diem of $3.00 for expenses of subsistence in addition to witness fees for each day of actual attendance and for each day necessarily occupied in traveling to and from hearings. A subpoena may be served only in the county in which the hearing is to be held, and a witness cannot be compelled to appear outside of such county. Claims for witness fees and mileage will be presented on Form No. 1-327, properly certified by an authorized certifying officer, and will be submitted in the usual way for payment.

(i) Findings of fact and decision by examiner; notice; submission to Director of the Bureau of Land Management. As promptly as possible following the termination of the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law and will render a decision upon all material issues of fact, law and discretion presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. In any case, he must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any appeal. A copy thereof shall be sent by registered mail to the appellant and all interveners: Provided, however, that the Director of the Bureau of Land Management may require, in specific cases, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the Rules of Practice (43 CFR Part 221).

(j) Notice of appeal to the Director of the Bureau of Land Management; furnishing copies of the record. Within ten days after the receipt of the decision of the examiner any party desiring to appeal to the Director of the Bureau of Land Management shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the appellant and to the interveners, at a charge of five cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervener is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed in the office of the Director.

(k) Effect of decision suspended pending appeal. An appeal shall suspend the effect of the decision appealed from pending the decision on appeal. However (1) the officer making a decision, either initially or on appeal, may, in his discretion when the orderly administration of the range or other public interest requires, provide, in the decision or by order made before an appeal is taken therefrom, that the decision shall be in full force and effect pending the decision on appeal, and (2) the officer to whom an appeal is taken may, in his discretion when the orderly administration of the range or other public interest requires, by order provide that the decision appealed from shall be in full force and effect pending the decision on appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Director or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(l) Appeals to the Director of the Bureau of Land Management. An appeal from the decision of the examiner to the Director of the Bureau of Land Management shall be filed, together with any brief desired in support thereof, within thirty days after date of receipt of the transcript of testimony, or, in the event the transcript of testimony is not requested, such appeal shall be filed within thirty days after receipt of the examiner's decision, in the office of the Director. A copy of the appeal and any brief in support thereof must be served on each party of record, either personally or by registered mail. Any party of record opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in said office a reply brief, if he so desires, a copy of which must be served upon the appellant in the same manner. Evidence of service of appeals and briefs must be furnished. The appeal in other respects shall be made in accordance with the Rules of Practice (43 CFR Part 221).

No adjudication of grazing privileges will be set aside on appeal if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(m) Appeals to the Secretary of the Interior. An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the Rules of Practice (43 CFR Part 221).

(n) Record as basis of decisions: definition of record. No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

The transcript of testimony and exhibits together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

161.10 General Rules of the Range.

(a) Acts Prohibited. The following acts are prohibited on the Federal range:

(1) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit; whether regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law, Provided, That permits to carry on controlled burning of vegetative cover or brush may be issued by the Bureau of Land Management in proper cases, such permits to be subject to such conditions as the Bureau of Land Management may see fit to impose, and to all State laws and regulations concerning such burning.

(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit.

(b) Rules of fair range practice. The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats, and ten miles per day for cattle or horses, Provided, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the range manager, the circumstances in any given case so require.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Bureau of Land Management. Upon request by the majority of the users of any community allotment of Federal range, the Bureau of Land Management may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements by the Bureau of Land Management, the provisions of State law on the subject shall be regarded as applicable. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.11 Procedure for enforcement of rules and regulations.

(a) Service of notice. Whenever it appears that there has been any willful violation of any provision of the act or of the Federal Range Code for Grazing Districts, the range manager will cause the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management to be served with a written notice, which will set forth the act or acts constituting such violation and in which reference will be made to the provision or provisions of the act or the Federal Range Code for Grazing Districts alleged to have been violated. Such notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

(b) Unlawful grazing on Federal range; removal of livestock; impoundment. Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(c) Amicable settlement of civil cases involving damage to Government property. All offers of settlement for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts will be transmitted by the regional administrator, with his recommendation, to the Director of the Bureau of Land Management for consideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by him, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(d) Disciplinary action for violations. The regional administrator is authorized to reduce or revoke a grazing license or permit or to deny renewal thereof for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code for Grazing Districts. Before any license or permit is reduced or revoked, or renewal thereof denied, because of such a violation, however, the regional administrator will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal Range Code for Grazing Districts alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the regional administrator to reduce or revoke the license or the permit, if the facts so warrant.

Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the regional administrator to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

Appeal from the decision of the examiner on any matter under this section shall be made in accordance with the provisions of paragraphs (j), (k), and (l) of section 161.9, and appeal to the Secretary of the Interior from the decision of the Director shall be made under paragraph (m) of section 161.9.

(e) Bonds for violations. Whenever a livestock operator commits a willful or wanton violation of any provision of these rules or has repeatedly committed violations, the regional administrator is authorized to require him to furnish a bond in an amount sufficient to cover all probably damage that may result from his violations during the ensuing year. The bond may be either a cash or a surety bond and will be in a form approved by the Director of the Bureau of Land Management. Upon the failure to furnish such bond when so required, the regional administrator is authorized to refuse to issue or renew a license or permit, or to revoke an existing license or permit. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.12 District Advisory Boards.

(a) Authorization for Establishment; Number of Members; Qualifications. Section 18 of the act provides that there shall be an advisory board of local stockmen in each grazing district. The regional administrator will fix the number of members to be elected to such board in each district, such number to be not less than five and not more than twelve, exclusive of a wildlife representative who will not be elective but will be appointed by the Secretary of the Interior. The regional administrator may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct established by him, or both, provided that the free-use licensees or permittees in each district will be entitled to one representative, who shall be a free-use licensee or permittee. All district advisers shall be elected in the manner provided in this section and, excepting the wildlife representatives, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) Elections; Time and Place of Holding; Notice. An election of district advisers for each grazing district will be held within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The region administrator may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The range manager will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional administrator and in the office of the range manager and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

(c) Elections; Qualifications of Electors. Only those persons who are qualified to receive regular or free-use licenses or permits will be allowed to vote in any election held pursuant to section 18 of the act, Provided, That in any new grazing district hereinafter established and embracing areas not heretofore within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to using the Federal range within said district. A minor may vote if otherwise qualified, Provided, That upon request by his natural or legal guardian his ballot may be cast by the guardian in the name of the minor. The judges at any election will be furnished by the representative of the Bureau of Land Management in charge with a list of all electors entitled to vote in the district. No one whose name does not appear on such list shall be allowed to vote, Provided, That anyone claiming that his name has been erroneously omitted from the list may obtain and mark a ballot which will be held uncounted until the range manager shall have had a further opportunity to determine whether or not the party was entitled to vote. If it is found that the party was entitled to vote, his ballot shall be counted, otherwise it shall be disregarded.

(d) Elections; judges; nominations; ballots; registration; challenges. The representative of the Bureau of Land Management in charge of an election will choose three qualified electors to act as election judges. The electors present may then place in nomination the names of the candidates, Provided, That nominations for the representative of a given precinct must be made by one qualified to represent such precinct, but ballots may be cast for any other person qualified to represent a particular class or precinct. Voting shall be only by ballots cast personally by qualified electors and proxies will not be recognized. No elector shall receive a ballot until he has registered by signing opposite his name on the list of persons entitled to vote. Before receiving a ballot any elector may be challenged by any other elector qualified to vote in the district and thereupon the judges, or any of them, may require the elector challenged to answer such questions concerning his qualifications as a voter as may be deemed necessary. Upon his failure or refusal to answer such questions satisfactorily, he shall not be permitted to register or to receive a ballot. Each candidate may designate any qualified elector to remain within the polling places during the casting and counting of votes and the declaration of the results thereof, and such person may act as a challenger. Before any elector shall be permitted to deposit his completed ballot in the ballot box, the judges shall write "Voted" opposite his signature on the registration list.

(e) Elections; method of voting. Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free-use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free-use license or permit may cast a ballot for one free-use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, shall cast one ballot each, on which shall be written the name or names of the total number of candidates to be elected in the district as representatives of the class of owners of livestock to which the elector belongs, Provided, That if he belongs to more than one such class he shall vote only for the candidates of the class in which he predominates in numbers of livestock, on the basis of one cow or horse being the equivalent of five sheep or goats. If a certain number are to be elected from each precinct, no ballot shall include the names of more candidates from any one precinct than are to be elected therefrom.

(f) Elections; close of polls; results; ties; judges' certificate. Polling places shall remain open on the day of the election from 2 p.m. to 5 p.m., or until those present at 5 p.m. shall have voted. Upon the closing of the polls the judges shall open the ballot box and count the votes. In case of a tie vote, a choice by lot shall be made by the judges in the presence of the tie candidates or of at least one representative designated by each such candidate for such purpose. As soon as the ballots have been counted, the judges shall make out a certificate of returns under their hands, stating the number of votes cast, the number of excess, unused or spoiled ballots, and, in both words and figures, the number of votes received by each candidate. The certificate, together with the ballots and the registration list of voters, shall be enclosed and sealed and forthwith delivered to the representative of the Bureau of Land Management in charge of the election.

(g) Appointment by Secretary of the Interior; Oath and Term of Office; Removal; Vacancies. No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the range manager. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional administrator, shall be transmitted to the Director, who shall consider the recommendation and, if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office for a term of three years and until a successor is appointed by the Secretary.

(h) Meetings; Organization. District advisory boards shall meet at any time and place within or near the district designated by the regional administrator or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Bureau of Land Management present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

(i) Functions and duties of district advisers. District advisers shall advise or make recommendations on the following matters:

(1) The carrying capacity of the Federal range in the district.

(2) Applications under the Federal Range Code for Grazing Districts, for grazing licenses or permits, either regular or free-use, Provided, That no board shall make a recommendation on an application by any of its members. Such an application shall be acted on in the first instance by the range manager.

(3) Proper rules of fair range practice.

(4) Allotments of range by classes of livestock or for community or individual use.

(5) Seasonal use of the Federal range or any part thereof.

(6) Applications for the construction or maintenance of improvements on the Federal range under section 4 of the act.

(7) Any recommendations made by local associations of stockmen in the district.

(8) Reservations of carrying capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(9) Special rules for the district, within the meaning of 161.15.

(10) Any other matter which they may desire to bring to the attention of the Secretary of the Interior, or on which he may request their advice. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)(July 14, 1939, 53 Stat. 1002; 43 U.S.C. 315o-1)

(j) State Advisory Boards. Each grazing district advisory board shall select from its members, at the first meeting of the board after an election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located, Provided, That where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected.

(k) National Advisory Board Council. Each State Advisory Board shall select from its members, at its first meeting after its membership is designated or changed, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council.

(l) Functions and duties of State Advisory Boards and National Advisory Board Council. In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope (48 Stat. 1269; 49 Stat. 1976, 43 U.S.C. 315 et seq.).

161.13 Local associations of stockmen.

(a) Organization. Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) Articles of incorporation; constitutions; by-laws. Such associations shall be organized as corporations "not-for-profit," if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the Director of the Bureau of Land Management before the organization of the association shall be recognized by the Department of the Interior. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) Powers. Such local associations should be authorized to exercise the following powers:

(1) To lease, or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(2) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(3) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by authority of the Secretary of the Interior.

(4) To act in an advisory capacity to the Secretary of the Interior in the administration of the Federal range lying within the district. All recommendations made by the association to the Secretary shall be subject to the provisions of the Federal Range Code for Grazing Districts and shall include the right of a hearing before an examiner of the Bureau of Land Management on the necessity and propriety of any action recommended and of appeal to the Secretary from the examiner's findings of fact and decision.

(5) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(6) To enter into cooperative agreement with the Secretary of the Interior or any officer designated by him for any of the foregoing purposes or for any other purpose authorized by the act.

(d) Cooperative agreements for use of lands; obligation of all licensees and permittees to share cost. Whenever the carrying capacity of Federal range is increased by reason of the acquisition of control of any lands by the Bureau of Land Management through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands, based on the number of livestock by which his license or permit is increased by reason of the administration of the association lands by the Bureau of Land Management, plus any authorized association assessments for other expenses. The range manager is authorized to refuse to issue a license or permit to any applicant or to cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such an agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges. (Sec. 9, 48 Stat. 1273; 43 U.S.C. 315h)

161.14 Construction and maintenance of improvements on the Federal Range.

(a) Statutory authorization. Section 4 of the act provides:

> "Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive."

(b) Applicants for permits and cooperative agreements; qualifications. An applicant for a permit or for a cooperative agreement or an arrangement to construct and maintain improvements of the character described in section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must satisfy the qualifications defined in 161.3(a).

(c) Applications; form and contents; filing. Applications for such permits, cooperative agreements, or arrangements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. If an application concerns the use and maintenance of improvements constructed and owned by a prior occupant under permit issued by the authority of the Secretary, it shall include also an itemized showing of their reasonable value at the time of filing the application and other evidence that the applicant has paid this amount to the prior occupant and has obtained title to the improvements free of all encumbrances, or a clear and concise explanation of the reasons for a lack of such agreement between the applicant and the prior occupant. When necessary properly to explain the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing their location in the grazing district. All applications shall be made on forms provided by the Bureau of Land Management, with such modifications as may be necessary, and shall be filed in triplicate with the range manager, who will submit them to the advisory board for consideration and recommendation prior to transmittal to the regional administrator for action.

(d) Applications for construction of improvements; consideration; appeals. The regional administrator, following the receipt of an application concerning the construction of an improvement, together with the recommendation of the advisory board and range manager, will act on the application and such action shall be final unless the applicant appeals to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and Secretary of the Interior shall be made in accordance with section 161.9(c) and sections 161.9(e) through 161.9(n). Decisions not appealed from, and, in any event, the decision of the Secretary shall be final.

(e) Applications for use of improvements owned by prior occupant; procedure upon failure to agree. An application to use and maintain improvements constructed and owned by a prior occupant, under permit issued by the authority of the Secretary, if accompanied by the by the evidence of ownership provided for in paragraph (c) of this section, shall be considered in the same manner as an application for the construction of improvements. Upon the filing of such an application showing that the applicant and the prior occupant have not agreed on the value of the improvements, the regional administrator will immediately, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, together with copies of the application and any accompanying papers and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or, if the prior occupant applies within thirty days from the date of service for a hearing, in the light of such evidence as the applicant and the prior occupant may desire to present in such hearing, the regional administrator will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and to the Secretary of the Interior shall be made in accordance with section 161.9(c) and (e) through (n). Decisions not appealed from and, in any event, the decision of the Secretary shall be final. Upon the failure of the prior occupant to show cause or to apply within thirty days for a hearing, the reasonable value of the improvements will be determined by the regional administrator: Provided, That in the event of such default by the prior occupant the value determined shall not be less than the amount alleged by the applicant in his application and the decision of the regional administrator in such cases shall be final. In any case when a decision has become final, payment by the applicant to the prior occupant of the amount determined and a showing that the improvements are free of all encumbrances shall be a condition precedent to favorable action on the application.

(f) Approval of application. Upon the approval of an application concerning the construction or use and maintenance of any improvements on the Federal range by the issuance of a permit or the approval of a cooperative agreement or other arrangement, the applicant may construct the improvements or use the improvements constructed and owned by the prior occupant, as the case may be. (Sec. 4, 48 Stat. 1271; 43 U.S.C. 315c)

161.15 Special rules for grazing districts. Whenever it appears to a regional administrator that local conditions in any district in his region make necessary the application of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the pruposes of the act, he may recommend such a rule, supported by a factual showing of its necessity, to the Secretary of the Interior for approval. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.16 Penal provision. Under section 2 of the act any willful violation of the provisions of the act or of the rules and regulations thereunder (the Federal Range Code for Grazing Districts), after actual notice of the existence of the provisions of such act or such rules and regulations, is punishable by a fine of not more than $500. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.17 Saving clause. So far as practicable, and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in 161.1(a) of the Federal Range Code for Grazing Districts, the provisions of 161.6(b) of the Code will not be applied to the prejudice of the position of anyone who on September 23, 1942, was the holder of a grazing license or permit or who on that date had pending an application therefor. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

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AMMENDMENT TO: CIRC. 1749

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1812

PART 221—RULES OF PRACTICE

SUBPART B—PROCEEDINGS BEFORE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT AND SECRETARY OF THE INTERIOR

WHEN APPEAL MAY BE TAKEN TO THE SECRETARY OF THE INTERIOR

Section 221.73 is amended to read as follows:

§ 221.73 *When appeal may be taken to the Secretary of the Interior.* In any proceeding relating to the public lands, an appeal may be taken to the Secretary of the Interior from a final decision of the Director, except from a decision of the Director which, prior to promulgation, has been approved by the Secretary, the Under Secretary, or an Assistant Secretary of the Interior.

(R. S. 161, 2478; 5 U. S. C. 22, 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 30, 1952.

[F. R. Doc. 52-1365; Filed, Feb. 4, 1952; 8:45 a. m.]

See Circ. 1749 4
1818

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular No. 1813]

PART 244—RIGHTS-OF-WAY FOR CANALS, DITCHES, RESERVOIRS, WATER PIPE LINES, TELEPHONE AND TELEGRAPH LINES, TRAMROADS, ROADS AND HIGHWAYS, OIL AND GAS PIPE LINES, ETC.

RIGHTS-OF-WAY OVER PUBLIC LANDS FOR TRAMROADS, TRAMWAYS, LOGGING, AND OTHER ROADS

1. Sections 244.39 and 244.40 are amended to read as follows:

§ 244.39 *Statutory authority.* The act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956), authorizes the Secretary under such general regulations as may be fixed by him, to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U. S. C. 525; 43 U. S. C. 665, 958). Before a right-of-way is issued under this section, the officer authorized to issue it must obtain the clearance of the regional administrator. Where the regional administrator determines it to be in the public interest, he will require applicants under this section to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under 43 CFR, Part 115 with appropriate modifications to meet local conditions: *Provided,* That where the land over which the right-of-way is requested is under the jurisdiction of an agency other than the Bureau of Land Management, the regional administrator shall make such requirement only with the concurrence of the authorized officer of such agency. The arbitration procedures involved in the stipulations shall be in accordance with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.40 *Tramroads defined.* Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

2. The cross reference after § 244.41 is amended to read as follows:

CROSS REFERENCE: Applications for logging road permits over revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands and public lands administered by the Bureau of Land Management which are in and west of Range 8 East, Willamette Meridian, Oregon, must be made under 43 CFR, Part 115.

(28 Stat. 635; 43 U. S. C. 956)

OSCAR L. CHAPMAN,
Secretary of the Interior.

FEBRUARY 8, 1952.

[F. R. Doc. 52-1794; Filed, Feb. 13, 1952; 8:46 a. m.]

Published in 17 F.R. 1425 of February 14, 1952

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See Circ 1831, too.

Replaced by 1973

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1814]

PART 146—EXCHANGES OF PRIVATELY OWNED LANDS UNDER TAYLOR GRAZING ACT

Sec.
146.1 Authority.
146.2 Application.
146.3 Determination of values; publication of notice of exchange.
146.4 Notice for publication and designation of newspaper; cost and proof of publication.
146.5 Deed to United States.
146.6 Evidence of title; policy of title insurance or certificate of title preferred.
146.7 Taxes.
146.8 Approval of exchange; rules of practice to be followed.

AUTHORITY: §§ 146.1 to 146.8 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

CROSS REFERENCES: For exchanges by States under the Taylor Grazing Act, see Part 147 of this chapter. For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for recreational purposes, see Part 254 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges for the consolidation or extension of national forests, see Part 148 of this chapter. For disposition of conflicting applications within the discretionary power of the Secretary of the Interior, see § 101.8 of this chapter. For exchanges of revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, Oregon, see §§ 115.94–115.113 of this chapter. For exchanges to elminate private holdings from national parks and national monuments, see Part 150 of this chapter. For exchanges within reclamation projects, see §§ 230.23–230.26 of this chapter. For general orders of withdrawals, modifications, see §§ 297.14 and 297.17 of this chapter.

§ 146.1 *Authority.* (a) Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), authorize the Secretary of the Interior when the public interests will be benefited thereby to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. Whether an exchange will benefit the public interest shall be determined by the officer authorized to act, as provided in paragraph (b) of this section.

(b) The Director, Bureau of Land Management, has been authorized to approve exchanges where the value of the selected land does not exceed $250,000 (Order No. 2583, August 16, 1950, Secretary of the Interior, 15 F. R. 5643, August 23, 1950). The regional administrators have been authorized to approve exchanges where the value of the selected land does not exceed $50,000 (Bureau of Land Management Order No. 427, August 16, 1950, 15 F. R. 5639, August 23, 1950). This authority, however, has been redelegated by the regional administrators to the managers of the land offices, subject to the restrictions set forth in Orders approved by the Secretary of the Interior August 20, 1951 (16 F. R. 8610–8628, August 25, 1951), and will be exercised by the managers unless otherwise ordered by the regional administrators. Only the Secretary of the Interior can approve exchanges in which the value of the selected lands exceeds $250,000.

§ 146.2 *Application.*[1] (a) Persons, firms, or corporations desiring to exchange lands pursuant to § 146.1 should file in the land office having jurisdiction over the selected lands or in the Washington Office of the Bureau of Land Management, when there is no land office within the State, an application in duplicate, on Form 4–728, or its equivalent, describing the offered and the selected land by legal subdivisions of the public land surveys. The application must contain the full name and post-office address of the applicant and must state whether any reservation of minerals, easements, or other rights in or to the offered lands are outstanding in third parties or desired by the applicant, and what use the applicant will make of such rights. It must also contain the reservations or easements which are acceptable to the applicant and are to be made by the United States affecting the selected lands.

(b) The applicant must be legally capable of consummating the exchange and the application must state that he is the owner of the lands offered in exchange, and that such offered lands are not the basis of any other exchange.

(c) The application must also include a corroborated statement relative to springs and water holes on the selected lands, in accordance with §§ 292.1 to 292.9 of this chapter. The application must state that the value of the selected land does not exceed the value of the offered land.

(d) No filing fees are required. However, the applicant shall pay one-half of the advertising cost.

§ 146.3 *Determination of values; publication of notice of exchange.* (a) The authorized officer shall determine the values of the offered and selected land, taking into consideration the value of any reservation of minerals, easements or other rights which are outstanding in third parties or to be made by the applicant or by the United States. If such officer determines that the value of the selected land exceeds the value of the offered land he will so inform the applicant and afford him the opportunity of bringing the exchange within the provisions of the law.

(b) When a determination has been made that the value of the selected land does not exceed the value of the offered land and that the public interests will be benefited by the exchange, the authorized officer shall, unless he has reason to do otherwise, direct publication of the notice of exchange in the newspaper or newspapers designated by him, and require the applicant to submit proof of publication and comply with the provisions of §§ 146.4, 146.5 and 146.7.

§ 146.4 *Notice for publication and designation of newspaper; cost and proof of publication.* The notice of publication must give the name and post-office address of the applicant, the serial number and date of the application, the act under which the application is filed and a description of the offered and selected lands in terms of legal subdivisions of the public land surveys, and must state that all persons asserting a claim to the selected lands or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objection has been served upon the applicant. The notice must be published once a week for 4 consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered lands are situated and in the same manner in a newspaper of general circulation in the county or counties in which the selected lands are situated. One-half of the cost of publication of the notice shall be paid by the applicant. Each newspaper will collect that portion of the cost of publication from the applicant and submit proper vouchers to the United States for the remaining one-half of such cost. Proof of publication of notice shall consist of a statement by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, and attaching thereto a copy of the notice as published.

§ 146.5 *Deed to United States.* The applicant shall submit a warranty deed of conveyance of the offered land to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the lands are situated together with satisfactory evidence of title, as required by § 146.6, showing that he was vested with a valid unencumbered title to the land at the time of the recordation of the deed. Revenue stamps required by Federal and State law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976)". A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of courtesy, dower, community interest or any other claim to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated, the grantor's spouse has no interest present or prospective in the land. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 146.6 *Evidence of title; policy of title insurance or certificate of title preferred.* (a) Consummation of an exchange is expedited by applicant's submission, as evidence of title to the offered land, of a policy of title insurance in the form approved by the Department of the Interior, Form 4-1202, or a certificate of title, issued by a qualified title insurance company which is acceptable to the Department of the Interior. Such evidence of title is therefore preferred. However, an abstract of title is also acceptable. The evidence of title must show and certify that title to the offered land has vested in the United States free and clear of all liens, encumbrances and assessments which may operate as liens, as of the date of recordation of the deed to the United States.

(b) A policy of title insurance or a certificate of title must be issued by a title insurance company authorized by law to issue such policies or certificates, and other evidence of title, if furnished, must be prepared and authenticated by an abstracter or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

§ 146.7 *Taxes.* In case taxes which have been assessed or levied on the offered lands constitute liens against the lands although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the land for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him.

§ 146.8 *Approval of exchange; rules of practice to be followed.* (a) The proof of publication, conveyance, title evidence and other evidence furnished by the applicant will be examined, and if found satisfactory and no valid objection appearing to the consummation of the exchange, title to the offered land will be accepted and patent for the selected land will issue.

(b) Protests against exchanges when filed in the proper office of the Bureau of Land Management will be considered and determined and the applicant and protestant will be notified accordingly.

(c) Any person aggrieved by any action of the manager or the regional administrator on an application for exchange, or a protest against such an application, may appeal to the Director, Bureau of Land Management, and from his decision to the Secretary of the Interior, pursuant to the rules of practice, Part 221 of this chapter.

(d) Should the application for exchange be finally rejected the evidence of title will be returned to the applicant and a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U. S. C. 872).

Note: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

APRIL 17, 1952.

[F. R. Doc. 52-4587; Filed, Apr. 23, 1952; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1815]

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Part 70 - See Circ. 1832 + 1857. too
Part 71 - See also 1859
" 79 - See Circ. 1841 for violations
Part 69 - See also 1852

PART 69—MINERAL LAND; GENERAL MINING REGULATIONS

PART 70—MINERAL LANDS; COAL PERMITS AND LEASES AND LEASES AND PERMITS FOR FREE USE OF COAL

PART 71—MINERAL LANDS; OIL AND GAS, PHOSPHATE, OIL SHALE LEASES, POTASH AND SODIUM PERMITS AND LEASES

PART 76—SCHOOL LAND RESERVATION; GRANT FOR UNIVERSITY

PART 79—TIMBER

SCHOOL SECTIONS

The act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.) which repealed the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), and amended section 1 of the act of March 4, 1915 (38 Stat. 1214, 1215; 48 U. S. C. 353) as amended, had the effect of reserving for the Territory of Alaska for educational uses certain sections 16, 33 and 36, which are mineral in character and which were not included in the reservation for the Territory made by the act of March 4, 1915, as amended. It also had the effect of removing such reserved school sections from the operation of the mining and mineral leasing laws and the operation of section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 421), as to the sale of timber. In order to show these changes, the regulations contained in the above-mentioned parts are amended as follows:

1. Sections 69.19 and 69.20 are amended to read:

§ 69.19 *Statutory authority: mining claims.* (a) The act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.) repealed the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), which provided for the disposition under the mining laws of the United States, of the minerals in the lands reserved to the Territory of Alaska for educational uses. No valid claim may, therefore, be initiated under the mining laws after March 5, 1952, on lands reserved to the Territory for educational uses.

(b) Unsurveyed public lands which when surveyed will be sections reserved for educational uses, will, until the survey of the lands in the field but not thereafter be subject to the operation of the mining and mineral leasing laws in like manner as other public lands.

§ 69.20 *Mining locations, entries and patents.* (a) Section 1 of the act of March 4, 1915, as amended, provides that nothing in that act shall affect any lands subject to or included in any valid application, claim, or right initiated or held under any laws of the United States, unless and until such application, claim, or right is extinguished, relinquished or cancelled. Therefore, any valid mining location or claim initiated prior to March 5, 1952, shall remain intact, subject to compliance with the mining laws and regulations thereunder applicable to the Territory, and subject to the rights of Territorial lessees. All proceeds or income derived by the United States from the disposition of the lands or the minerals therein under such outstanding mining claims shall be appropriated and set apart as permanent funds in the Territorial treasury.

(b) Controversies between Territorial lessees and owners of mining claims on the same land involving the right of possession, occupancy and use of lands, or liability for damages, are matters within the jurisdiction of the local courts.

(R. S. 2478; 43 U. S. C. 1201)

2. Sections 70.28 and 70.29 are amended to read:

§ 70.28 *Coal permits and leases.* The act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.), repealed the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), which authorized the issuance of coal permits and leases under the act of October 20, 1914 (38 Stat. 741), as amended, on lands reserved to the Territory of Alaska for educational uses. Therefore, the act of October 20, 1914, will not be applicable, after March 5, 1952, to lands reserved to the Territory for educational uses under the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as amended by the act of March 5, 1952, except as provided in § 70.29.

§ 70.29 *Occupation and use of surface by coal permittees or lessees.* (a) Section 1 of the act of March 4, 1915, as amended, provides that nothing in that act shall affect any lands subject to or included in any valid application, claim or right initiated or held under any law of the United States unless and until such application, claim, or right is extinguished, relinquished or canceled. Therefore, any valid applications for coal permits or leases filed, or coal permits or leases issued prior to March 5, 1952, and in good standing on that date, shall remain intact, subject to compliance with the act of October 20, 1914, and the regulations in §§ 70.1 to 70.27, and subject to the rights of Territorial lessees. All proceeds or income derived by the United States from any such outstanding coal permits or leases shall be appropriated and set apart as permanent funds in the Territorial treasury.

(b) Controversies between Territorial lessees and coal permittees or lessees on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages, are matters within the jurisdiction of the local courts.

(Sec. 17, 38 Stat. 745; 48 U. S. C. 451)

3. Section 71.12 is amended to read:

§ 71.12 *Potash and sodium permits and leases, and oil and gas, phosphate and oil shale leases.* (a) The act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.) repealed the act of August 7, 1939 (53 Stat. 1243; 48 U.S.C. 353), which authorized the issuance of permits or leases for the prospecting for or mining potash, sodium, oil, gas, phosphate or oil shale deposits from the lands reserved to the Territory of Alaska for educational uses, by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353). Therefore, the mineral leasing act of February 25, 1920 (41 Stat. 437), as amended, will not be applicable after March 5, 1952, to lands reserved to the Territory for educational uses.

(b) Section 1 of the act of March 4, 1915, as amended, provides that nothing in that act shall affect any lands subject to or included in any valid application, claim, or right initiated or held under any law of the United States, unless and until such application, claim, or right is extinguished, relinquished or cancelled. Accordingly, any valid applications for mineral permits or leases filed, or mineral permits or leases issued prior to March 5, 1952, and in good standing on that date, shall remain intact, subject to compliance with the provisions of the mineral leasing act of Feburary 25, 1920, as amended, and the regulations in Parts 191, 192, and 194 to 197 of this chapter, and subject to the rights of Territorial lessees. All proceeds or income derived by the United States from any such outstanding mineral permits or leases shall be appropriated and set apart as permanent funds in the Territorial treasury.

(c) Controversies between Territorial lessees and mineral permittees or lessees on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages are matters within the jurisdiction of the local courts.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

4. Section 76.1 is amended as indicated below and § 76.2 is revoked.

§ 76.1 *Statutory authority.* (a) By section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as amended by the act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.), sections 16 and 36 in every township are reserved for the support of the common schools in Alaska and section 33 in each township between parallels 64° and 65° of north latitude and between 145° and 152° of west longitude are reserved for the support of a Territorial agricultural college and school of mines, now University of Alaska.

(b) No homestead settlement or other appropriation under the public land laws may be made after survey in the field on unsurveyed public lands which, when surveyed, will be reserved for educational uses, as provided in paragraph (a) of this section.

(R. S. 2478; 43 U. S. C. 1201)

5. Section 79.29 (a) and (b) is amended to read:

§ 79.29 *Timber on reserved school section lands.* (a) The act of March 5, 1952 (Pub. Law 270, 82d Cong., 2d Sess.), repealed the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353), authorizing the sale of timber under the provisions of section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 421), on lands reserved to the Territory of Alaska for educational uses by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353). Therefore, no sale of timber may be made under the act of May 14, 1898, after March 5, 1952, on surveyed sections 16, 33 and 36, which are reserved to the Territory for educational uses.

(b) Unsurveyed public lands which when surveyed will be sections reserved for educational uses will, until the survey of the lands in the field but not thereafter, be subject to the act of May 14, 1898, for the sale of timber thereon.

(Sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 423)

DALE E. DOTY,
Acting Secretary of the Interior.

APRIL 30, 1952.

[F. R. Doc. 52-5083; Filed, May 6, 1952; 8:46 a.m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1816]

PART 64—HOMESITE OR HEADQUARTERS

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

Section 64.6a is hereby amended to read as follows:

§ 64.6a *Notice of initiation of claim.* Any qualified person initiating a claim on or after April 29, 1950, under the act of May 26, 1934, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, such person must file notice of the claim in the proper land office within 90 days from that date.

(Sec. 10, 30 Stat. 413, as amended; 48 U. S. C. 461)

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 13, 1952.

[F. R. Doc. 52-5510; Filed, May 19, 1952; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1817]

PART 105—RELINQUISHMENTS, CANCELLATIONS AND REINSTATEMENTS

RELINQUISHMENTS

The headnote for § 105.1 and paragraphs (a) and (b) of that section, are amended to read:

§ 105.1 *When relinquished land becomes subject to further appropriation; relinquishments in right-of-way, amendment and repayment cases.* (a) (1) Upon the filing in the proper land office of the relinquishment of a homestead claim, the land, if otherwise available, will at once become subject to further application or other appropriation in accordance with the applicable public land laws. A provision to this effect is contained in section 1 of the act of May 14, 1880 (21 Stat. 140; 43 U. S. C. 202).

(2) Upon the filing of a relinquishment of an entry or claim (other than a homestead claim), or a lease, the land will not become subject to further application or other appropriation until the entry, claim or lease has been canceled pursuant to the relinquishment and the fact of the cancellation has been noted on the tract books in the land office.

(b) The relinquishment of an approved right-of-way may be conditioned upon the approval of a subsequent application, filed as an amendment to the approved right-of-way, or as an independent application, but conflicting in whole or in part with the approved right-of-way. Such a relinquishment will not be accepted and noted on the land office tract books until action on the subsequent application is taken.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 16, 1952.

[F. R. Doc. 52-5693; Filed, May 22, 1952; 8:48 a. m.]

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See Circ
1749 & 1812

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular No. 1818)

PART 221—RULES OF PRACTICE

SUBPART B—PROCEEDINGS BEFORE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT AND SECRETARY OF THE INTERIOR

MISCELLANEOUS AMENDMENTS

1. Section 221.75 is amended to read as follows:

§ 221.75 *Notice of appeal to Secretary.* (a) An aggrieved person desiring to appeal to the Secretary of the Interior from a decision rendered by the Director of the Bureau of Land Management must, within 30 days from the date of the service upon such person or his authorized representative of notice of the Director's decision, file a notice of appeal with the Director, Bureau of Land Management, Department of the Interior, Washington 25, D. C.

(b) A notice of appeal shall set forth clearly and concisely the grounds upon which the appellant contends that the Director's decision is erroneous.

(c) If the Director's decision indicates that any other person has an interest in the proceeding adverse to the appellant, the appellant shall, within the 30-day period prescribed in paragraph (a) of this section (or such further period as may be allowed by the Secretary or his representative for good cause shown), file a certificate showing that a copy of the notice of appeal has been served personally upon or mailed to each such person or his authorized representative. If the certificate accompanies the notice of appeal, it shall be filed with the Director of the Bureau of Land Management. Otherwise, it shall be filed with the Solicitor, Department of the Interior, Washington 25, D. C.

(d) An appeal shall be subject to summary dismissal for failure to comply with any of the requirements prescribed in this section.

2. Section 221.76 is amended to read as follows:

§ 221.76 *Filing of briefs.* (a) Within 20 days after filing a notice of appeal (or within such further period as may be allowed by the Secretary or his representative for good cause shown), the appellant may file with the Solicitor, Department of the Interior, Washington 25, D. C., a brief in support of his appeal. If any other person has an interest in the proceeding adverse to the appellant, the brief shall be accompanied by a certificate showing that a copy of the brief has been served personally upon or mailed to each such person or his authorized representative.

(b) Within 20 days after personal service upon or 25 days after the date of the mailing of the appellant's brief to an adverse party (or within such further period as may be allowed by the Secretary or his representative for good cause shown), the adverse party may file a reply brief with the Solicitor, Department of the Interior, Washington 25, D. C. The reply brief shall be accompanied by a certificate showing that a copy of the reply brief has been served personally upon or mailed to the appellant or his authorized representative.

3. Sections 221.77, 221.78, and 221.79 are revoked.

4. The foregoing amendments to the regulations shall be effective with respect to all decisions rendered by the Director of the Bureau of Land Management on and after the 30th day following the publication of the amendments in the FEDERAL REGISTER.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 16, 1952.

[F. R. Doc. 52-5694; Filed, May 22, 1952; 8:48 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter B—Applications and Entries

[Circular 1819]

PART 106—PROOFS

PAYMENT FOR REPUBLICATION OF NOTICE, WHEN NECESSARY BECAUSE OF ERROR OF MANAGER OR PUBLISHER

Section 106.15(c) is amended to read:

§ 106.15 *Payment for republication of notice, when necessary because of error of manager or publisher.* * * *

(c) Neglect of the duty defined in paragraphs (a) and (b) of this section, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the entire cost of such republication shall be borne by the Government. If an error is committed by the printer of the paper in which the notice appears, the manager may require such printer to correct his error by publishing the notice anew for the necessary length of time at his own expense, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

(20 Stat. 472; 43 U. S. C. 251)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JUNE 6, 1952.

[F. R. Doc. 52-6461; Filed, June 12, 1952; 8:46 a. m.]

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See Circ. 1563, 1657, 1745, 1754, 1774, &c.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1820]

PART 75—SALES AND LEASES

SALE OF LAND AT PUBLIC AUCTION FOR INDUSTRIAL OR COMMERCIAL PURPOSES, INCLUDING HOUSING

Section 75.39 is amended so as to increase the maximum amount of the bond which may be required by paragraph (f) of that section for the protection of the surface owner of land sold under 43 CFR 75.23 to 75.40 from $5,000 to $20,000.

Paragraph (f) of § 75.39 is amended to read as follows:

§ 75.39 *Issuance of patent; reservations; disposal of minerals.* * * *

(f) Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by the regional administrator as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

(Sec. 5, 63 Stat. 679; 48 U. S. C. Sup. 364e)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JUNE 6, 1952.

[F. R. Doc. 52-6462; Filed, June 12, 1952; 8:47 a. m.]

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~~Obsolete~~

~~Replaced by 1840~~

Replaced by Circular 1927 (11/58)

Part 200 — also see Circ 1657, 1668 + 1804

Obsolete as to Part 200 — see Cir 1827 1890

OBSOLETE AS TO THIS PART ONLY 1840

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circ. No. 1821]

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

PART 192—OIL AND GAS LEASES

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

MISCELLANEOUS AMENDMENTS

The following amendments of certain sections of Part 200 are necessary to show in that part a change from the practice of issuing a noncompetitive lease for acquired lands on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease offer form for acquired lands becomes a lease when signed on behalf of the United States. The change will make the handling of noncompetitive leases for acquired lands substantially similar to that for public domain lands and will eliminate some of the steps now necessary in issuing such leases. In addition, certain minor changes are being made in Parts 191 and 192. The amendments of Parts 191 and 192 will become effective 30 days after date of issuance hereof by the Secretary of the Interior and the amendments to Part 200 will become effective 60 days after that date except as provided in § 200.11. The amendments are as follows:

1. Sections 191.3 and 191.6 are amended to read:

§ 191.3 *Who may hold leases and permits.* Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 191.6 *Special stipulations for lands where surface control is under jurisdiction of the Department of Agriculture or for lands in reclamation projects.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands the surface control of which is under the jurisdiction of the Department of Agriculture will be required to consent to the inclusion therein of the stipulation on Form 4–216. Where the land has been withdrawn for reclamation purposes the offeror or applicant may be required to consent to the inclusion of a stipulation on Form 4–467 if the land is potentially irrigable, or Form 4–467 (a) if the land is within the flow limits of a reservoir site, or Form 4–467 (b) if the land is within the drainage area of a constructed reservoir. Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

(Sec. 32, 41 Stat. 450, sec. 1, 44. Stat. 301; 30 U.S. C. 189, 271)

2. Sections 192.42 (b), (d), (e) and (l) and § 192.141 (a) (1) and (b) are amended to read:

§ 192.42 *Offer to lease and issuance of lease.* * * *

(b) Five copies of Form 4–1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States in which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C. If less than five copies are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining required copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30 day period, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30 day period but before the offer has been rejected, the offeror will have a priority as of the later filing date. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

(d) Each offer must be filled in on a typewriter or printed plainly in ink, and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge, except as provided in paragraph (g) of this section, even though the offer should be rejected or withdrawn in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (5) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 acres. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statement as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

* * * * *

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 192.141 *Requirements for filing of transfers.* (a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4), (5) and (f).

* * * * *

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application, and the statement required by § 192.42 (e) (3).

* * * * *

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

3. Sections 200.4, 200.5, and 200.8 are amended and a new § 200.11 is added, to read:

§ 200.4 *Other regulations applicable; lease forms, applications, and offers.* Except as otherwise specifically provided in §§ 200.1 to 200.36, inclusive, the regulations prescribed under the mineral leasing laws, and contained in Parts 70, 71, and 191 to 198, inclusive, of this chapter, shall govern the disposal and development of minerals under the act to the extent that they are not inconsistent with the provisions of the act. All oil and gas leases, other than those issued under § 200.8, shall be issued on Form 4–1097. Separate applications or offers must be made for public lands and acquired lands.

§ 200.5 *Lease or permit applications, excepting noncompetitive oil and gas offers; supplemental information required; place of filing.* (a) In addition to the information required by the appropriate regulations, referred to in § 200.4, each application for a lease or permit, except noncompetitive oil and gas offers, must contain (1) a separate statement of the applicant's interests, direct and indirect, in leases or permits for similar mineral deposits, or in applications therefor, on federally owned acquired lands in the same State, identifying by serial number the records where such interests may be found, and (2) a complete and accurate description of the lands for which a lease or permit is desired. If the lands are surveyed according to the government's rectangular system, they should be described by legal subdivision, section, township and range, and if not so surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance or described in a manner consistent with the description in the deed to the United States. The application should name the governmental agency having administrative control over the surface use of the land and identify the unit or project, if any, of which the land is a part. If practicable, the name of the person who conveyed the land to the United States, the date of the conveyance, and the place, liber, and page number of its official recordation should be given.

(b) All applications under this section shall be filed with the Bureau of Land Management, Washington 25, D. C.

§ 200.8 *Offer to lease and issuance of lease.* (a) To obtain a noncompetitive oil and gas lease, an offer to accept such a lease must be made on Form 4–1196, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands Lease,"[1] or on unofficial copies of that form in current use, provided that the copies are exact reproductions on one page, size 8½ x 14 inches, of both sides of the official approved one page form, and are without additions, omissions, or other changes or advertising, except that the copies shall include the following statement above the signature of the offeror: "This form is submitted in lieu of official Form 4–1196 and contains all of the provisions thereof as of the date of filing of this offer." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. Form 4–1196, or a valid reproduction of the official form, will also constitute the lease, when signed by the appropriate official of the Bureau of Land Management.

(b) Seven copies of Form 4–1196, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office.[2] The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours. If less than seven copies of an offer are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30 days, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30 day period but before the offer has been rejected, the offeror will have a priority as of the later filing date.

(c) The offeror shall mark one of the copies first filed at the top with the word "original". If that is not done, the manager or other appropriate official of the Bureau of Land Management will so mark one copy. If there is any variation in the land descriptions among the seven copies, the copy marked "original" shall govern as to the lands covered by the lease. Each offer shall give the name of the governmental agency having administrative control over the surface use of the land and identify the unit of the project involved, if any, and shall be accompanied by either a certified copy of the deed as recorded conveying the land to the United States, or a certified copy of so much of that deed as pertains to the land described in the offer; by a certified copy of any instrument of record containing a provision affecting the oil and gas in the land; and by the certificate of the county recorder or other official having custody of the records of deeds, or the certificate of a duly licensed abstractor, either that no such instrument is shown on the records, or identifying by date and names of the parties such instruments as may be shown on the records and certifying that no other such instruments are shown on the records. If such information and evidence do not accompany the offer, it will not be rejected, if not otherwise subject to rejection, until 30 days from the date of filing has elapsed and if during that period such information and evidence are filed, the offeror's priority will date from the date of the filing of the offer. If such information and evidence are not filed within the 30 days, the offer will be rejected and returned and will afford no priority to the offeror. Should the information and evidence be filed after the 30 days but before the offer has been rejected, the offeror will have a priority as of the later filing date.

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[1] Filed as part of the original document.

[2] Since there are no land offices in the following States, offers for lands or deposits in Nebraska and Kansas shall be filed in the Land and Survey Office, Cheyenne, Wyoming; those for North and South Dakota, in the Land Office, Billings, Montana; those for Oklahoma and Texas, with the Regional Administrator, Region V, Albuquerque, New Mexico; and those for all other States east of the States named above, shall be filed with the Regional Administrator, Region VI, Bureau of Land Management, Washington 25, D. C.

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township and range, and State, if the lands have been surveyed according to the government rectangular system, and if not so surveyed, by a metes and bounds description connected with a corner of the public land survey by course and distance or described in a manner consistent with the description in the deed to the United States. The offer must cover only lands entirely within a six mile square, and must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(1) In addition, an offer for government owned oil and gas deposits in land to which the act of September 6, 1950 (64 Stat. 769; 7 U. S. C., 1033), applies, must include and describe all of the land as it is described in the deed to the present owner to the extent that the government has an interest in such deposits and must not include any other land, even though held by the same owner. Such an offer must be accompanied by a statement from the County Supervisor or other local representative of the Farmers Home Administration or other agency of the Department of Agriculture, having jurisdiction over the land indicating that the land embraced in the offer is subject to the act of September 6, 1950, and is described in accordance with the deed to the present owner. When an offer for deposits in land subject to the act of September 6, 1950, is not accompanied by the above statement, or describes lands contrary to the above limitations, then if such statement or the amended or additional offers necessary to comply with the above requirements are received within 30 days from the filing of the original offer, the offeror's priority will date from the filing of the original offer. If such documents are filed after the expiration of the 30 days but before rejection of the original offer, the offeror's priority will date from the filing of such documents.

(2) If the United States does not own a 100 percent interest in the oil and gas in any particular tract, the offeror must give the percentage of government ownership and also the information required by § 200.7 (d). If the offer is for lands in which the government has only a future interest in the oil and gas, the offeror must file the additional showing required by § 200.7 (b) and execute the supplemental agreement required by § 200.7 (c).

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge even though the offer should be rejected or withdrawn either in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision, or on the computed acreage included within a metes and bounds description.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (5) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 acres. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statement as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(f) If the offeror is a corporation, the offer must be accompanied by:

(1) A certified copy of the articles of incorporation, or appropriate reference by land office serial number of the record of the Bureau in which such a copy already has been filed, with statement as to any subsequent amendments.

(2) A statement showing the percentage of each class of the corporation's stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be, or who the corporation has reason to believe are, aliens or who have addresses outside of the United States, indicating which classes of stock have voting rights.

(3) A list of the names and addresses of aliens or stockholders living outside of the United States, if more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by, or on behalf of such persons, the list to show the amount and class of stock held by each, and to the extent known to the corporation, or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(4) A separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 percent of the stock of the corporation.

(5) A copy either of the minutes of a meeting of the board of directors or of the bylaws indicating that the officer signing the offer to lease has authority to do so, or in lieu of such a copy, a certificate of the secretary or the assistant secretary of the corporation to that effect, over the corporate seal.

(g) An offer will be rejected and returned to the offeror, and it will confer no priority if it does not meet the requirements of the regulations in Parts 191, 192 of this chapter, and this part, and the instructions printed on the lease form, and is not accompanied by the payments and documents required by such regulations and instructions, except that where a corporation has previously filed in any land office any of the documents required by paragraph (f) of this section or an offeror has previously filed the information and title evidence required by paragraph (c) of this section, a reference to that file may be made in lieu of the document, information, and title evidence together with a statement as to any changes therein since they were filed. When an offer is rejected under this paragraph, the offeror will be given an opportunity to file a new offer within 30 days from the date of service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The corrected offer will retain the same serial number, but the effective date of priority will be as of the date such new offer is received.

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, Form 4-1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4–1196 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4–1196 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer and bond form, if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs of devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 200.11 *Pending applications; use of new Form 4–1196.* Applications filed prior to the effective date of the amended regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4–1097, except:

(a) An applicant may, without losing his priority, file Form 4–1196 for the land described in his application, pursuant to § 200.8, but without paying the required filing fee, if the filing fee has already been paid.

(b) Where required to do so, an applicant who has an application pending when the regulations in this part become effective must within 30 days from receipt of notice, file pursuant to the regulations Form 4–1196, without another filing fee if such fee has already been paid, covering the same land, and identify by office and serial number his pending application. Such refiling will retain the priority of the original application, if made within the 30-day period. The application of those who fail to refile within the 30 days will be closed without further notice upon the expiration of that period, unless prior to the rejection of the application and after the expiration of the 30 days a refiling is made, in which case the applicant's priority will date from the date of refiling.

(c) From the date of issuance of the amended regulations in this part until their effective date, Form 4–1196, or unofficial copies thereof, which are exact reproductions on one page of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

(Sec. 10, 61 Stat. 915, sec. 6, 64 Stat. 770; 30 U. S. C. Sup. 359, 7 U. S. C. Sup. 1038)

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

R. D. SEARLES,
Acting Secretary of the Interior.

JUNE 16, 1952.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Cir. No. 1822]

PART 244—RIGHTS-OF-WAY FOR CANALS, DITCHES, RESERVOIRS, WATER PIPE LINES, TELEPHONE AND TELEGRAPH LINES, TRAMROADS, ROADS AND HIGHWAYS, OIL AND GAS PIPE LINES, ETC.

EMERGENCY ACCESS PERMITS FOR SALVAGE OPERATIONS

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AUTHORITY: §§ 244.70 to 244.92 issued under 28 Stat. 635, 50 Stat. 874; 43 U. S. C. 956.

§ 244.70 *Statutory authority.* (a) The act of January 21, 1895 (28 Stat. 635, 43 U. S. C. 956), authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tram roads to the extent of 50 feet on each side of the center line of the tram road, by any citizen or association of citizens of the United States engaged in the business, among others, of cutting timber. The act of January 21, 1895, is made applicable to the revested Oregon and California railroad and the reconveyed Coos Bay wagon road grant lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874). provides for the conservation and the management of the said revested and reconveyed lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 244.71 *Statement of policy.* (a) Timber lands of the United States administered by the Bureau of Land Management in western Oregon, western Washington and northwestern California and intermingled and adjacent timber lands in other ownerships during the course of the years 1950 and 1951 have been visited by wind storms of unusually high velocity which have caused extensive wind throw of standing timber. In addition, fires of unusual intensity and magnitude during the summer of the year 1951 burned through extensive acreages of standing timber in the area. The timber thus killed by wind and fire is subject to considerable deterioration with resulting loss of a valuable natural resource if not promptly salvaged. Moreover, such extensive areas of dead and damaged timber have already furnished Douglas fir beetles with breeding places sufficiently favorable to convert an endemic infestation to epidemic proportions, which results in further deterioration of damaged timber and provides a serious threat of loss and destruction to green timber presently unaffected by such infestations. All of the timber thus killed by wind, fire or insects creates conditions of high fire hazard. Reduction of such hazard, the elimination of the epidemic insect infestation, and the recovery of the resource values in the dead and damaged timber requires the immediate harvesting of the affected trees. This, in turn, necessitates ready opportunity for access to such affected timber. Therefore, in view of the extraordinary, immediate, emergency situation, short-term emergency access permits will be issued in accordance with the terms of §§ 244.70 to 244.92 to authorize use of lands of the United States administered by the Bureau of Land Management for the purpose of access to such timber salvage operations. Such permits will not authorize the use of such lands for the removal of other timber; long-term access to any timber controlled by an applicant, whether salvage or healthy, may be obtained over lands administered by Bureau pursuant to 43 CFR 115.154 et seq., or 244.39 to 244.40.

(b) An emergency access permit will authorize access to conduct a salvage operation for a term of not more than one year, with additional time allowed for necessary road construction. No extension except as authorized pursuant to § 244.78, and no renewal of any such permit will be granted nor will more than one such permit be issued respecting any specific salvage operation.

§ 244.72 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 244.70 to 244.92:

(a) "Bureau" means Bureau of Land Management.

(b) "Regional Administrator" means the Regional Administrator, Region I (in the case of Oregon and Washington), or Region II (in the case of California), Bureau of Land Management, or his authorized representative.

(c) "District Forester" means a district forester of the Bureau who is stationed in western Oregon, western Washington or northwestern California.

(d) "Tramroads" means tramways and wagon or motor truck roads to be used in connection with logging and the manufacturing of lumber.

(e) "Salvage area" means any timber land in western Oregon, western Washington or northwestern California either (1) within the exterior boundary of an area burned by a forest fire where the resulting fire hazard has not been abated, or (2) containing merchantable wind-thrown trees, or (3) which contains standing trees killed by or dying from Douglas fir beetle infestation.

(f) "Salvage operation" means the removal of trees that, in the judgment of the Regional Administrator, are in a salvage area and subject to rapid deterioration because they have been killed or injured by some catastrophic natural cause such as wind, fire, disease or insect infestation, and of timber which, in the judgment of the Regional Administrator, is susceptible to insects. A salvage operation may include, in addition, the removal of healthy intermingled and adjacent trees, provided:

(1) Either the total volume of the trees to be removed does not exceed 100,000 board feet, or

(2) Such healthy trees are, in the judgment of the Regional Administrator, physically located so that their removal is required by normal logging practices, or their removal is economically necessary to make a minimum practical logging operation; for a salvage operation in which logs can be yarded with crawler type tractors, the volume of such healthy timber shall not exceed 35 percent of the total volume to be removed, and for a salvage operation in which logs must be yarded with donkey engine the volume of the healthy timber may not exceed 65 percent of the total volume to be removed.

(g) "Timber susceptible to insects" means healthy and drought weakened living trees most immediately adjacent to and not exceeding in number the currently critically infested trees which, in turn, are immediately adjacent to an area covered with trees which are dead or dying as the result of an attack by Douglas fir beetles.

(h) "Critically infested tree" means a tree infested with Douglas fir beetles to such an extent that such infestation may be reasonably expected to cause the death of such tree.

(i) "Emergency access permit" means a permit issued pursuant to §§ 244.70 to 244.92.

(j) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the control of forest insects, pests and disease, and other activities of a similar nature.

(k) "Licensee" means with respect to any road or right-of-way, any person who is authorized to remove forest products derived from a salvage operation conducted on lands of the United States. A licensee is not an agent of the United States.

(l) "Direct control" of a road, right-of-way, or land, by an applicant for an emergency access permit, means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with §§ 244.70 to 244.92.

(m) "Indirect control" of a road, right-of-way, or land, by an applicant for an emergency access permit means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 244.73 *Nature of emergency access permit.* (a) An emergency access permit does not constitute an easement and does not confer any right on the permittee to any material for construction or other purposes. An emergency access permit is merely a non-exclusive license to transport across lands of the United States administered by the Bureau of Land Management and specified in such emergency access permit, forest products derived from a specified salvage operation.

(b) An emergency access permit, when issued, is intended only to afford to the permittee access necessary for an immediate salvage operation in timber which is to be specifically described in such emergency access permit. Such an emergeny access permit is not intended to afford access for the harvesting of timber other than that described in such permit. Its sole function is as an aid to conservation in the immediate removal of timber, of the type described in § 244.72 (f), which constitutes a present menace to healthy timber in the area. Such emergency access permit is not intended, therefore, to accomodate logging activities of a continuing nature. Where there is more than one salvage operation to be conducted on land tributary to the same road or same road system, an emergency access permit may be issued to embrace any one or more of such operations, or a separate emergency access permit may be issued for each such operation. But with respect to any single salvage operation, no more than one emergency access permit will be issued and no renewal or extension thereof will be granted except an extension for road construction purposes, pursuant to § 244.78: *Provided, however,* That if a permittee's access to a salvage operation is suspended by virtue of an award of arbitrators made pursuant to § 244.81, or pursuant to an agreement, approved by the Regional Administrator, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension.

§ 244.74 *Filing of application.* An application for an emergency access permit must be submitted in duplicate on Form 4–1213 and filed in the office of the appropriate district forester. Application forms will be furnished by the Regional Administrator and the district foresters on request. No application will be received for fiiling subsequent to one year from the date when §§ 244.70 to 244.92 are published in the FEDERAL REGISTER.

§ 244.75 *Contents of application.* (a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of Part 137 of this chapter.

(b) An application by an unincorporated association must disclose the names of all the members of such association.

(c) An application by a private corporation must include the statement of the president, vice president or secretary of such corporation that the corporation is authorized to transact business within the State involved.

(d) Where the application is for an emergency access permit across lands over any portion of which the applicant proposes to construct a road, the application must be accompanied by two copies of a sketch map showing the approximate route of the proposed road. The Regional Administrator, where he finds it to be in the public interest, may require an applicant to furnish a more accurate map showing the survey of the proposed road and the specifications to which the applicant proposes to construct such road.

(e) Where the application is for the use of an existing road, the applicant must furnish a map adequate to show the location of such road, together with a statement of the nature of any improvement he proposes to make on such road.

(f) Every application must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested route of access will connect, the portion of such road systems which the applicant directly controls within the meaning of § 244.72 (k), the portions thereof which the applicant indirectly controls within the meaning of § 244.72 (l), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has indirect or no control, he must furnish a statement showing, for the two years preceding the date of the filing of the application, the date and nature of any change in his control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. The map must bear the certification of the applicant that the facts as to control as set forth in such map are true to the best of the applicant's information and belief.

§ 244.76 *Reciprocal road use agreement; recordation.* (a) Unless the regional administrator finds that use of the road system (including both existing roads and lands over which such roads are practically able to be extended, for authority to traverse any portion of which system the applicant seeks an emergency access permit) will not be convenient or economically necessary for access to and the removal of forest products from salvage operation on lands administered by the Bureau, the regional administrator, as an condition precedent to the issuance of such permit, shall require the applicant:

(1) As to such portions of such road system as are directly controlled by the applicant, to grant to the United States and its licensees rights of use; and

(2) As to such portions of such road system as are indirectly controlled by the applicant, either to obtain rights of use for the United States and its licensees or to make a showing satisfactory to the

regional administrator that he has negotiated therefor in good faith and to waive to the United States, its licensees and permittees any exclusive or restrictive rights he might have to such portions of the road system as are indirectly controlled by him.

(b) Rights of use granted to the United States and its licensees under paragraph (a) of this section shall be for a period of time to be fixed pursuant to § 244.78 and for the purposes set forth in § 244.77. Where the United States or its licensees exercises such right of use, the permittee shall be entitled to receive compensation therefor to be fixed in accordance with the standards and procedures set forth in §§ 244.79 or 244.80 and 244.82.

(c) Where the regional administrator finds that no such rights will be needed by the United States for the conduct of salvage operations on its lands tributary to such road system, the regional administrator may issue an emergency access permit without requesting the applicant to grant any rights to the United States under this section.

(d) Any grant of rights to the United States made pursuant to this section unless modified under § 244.79, shall be executed on Form 4–1214, which shall constitute and form a part of any emergency access permit issued upon the application involved. The applicant shall record such grant in the office of land records of the county or counties in which the roads or lands subject to the agreement are located and submit to the regional administrator not later than 30 days after the issuance of the emergency access permit, a true copy of such agreement bearing the certificate of the appropriate county official as to such recordation. Failure either to cause such recordation or to furnish such certificate thereof in accordance with this paragraph shall void such emergency access permit.

§ 244.77 *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from salvage operations on lands administered by the Bureau. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by § 244.79 or § 244.81.

§ 244.78 *Duration and location of rights granted or received by the United States.* The rights granted by the United States under §§ 244.70 to 244.92, will be for a stated term of not to exceed one year for the transportation of forest products to be derived from a specified salvage operation plus not to exceed 3 months for such road construction as may be necessary: *Provided, however,* That upon a permittee's showing, made prior to the expiration of the period, if any, allowed for such construction, that unusual weather conditions have delayed completion of such construction, a district forester may in his discretion extend the period for such construction for not to exceed a total of three additional months: *And provided further,* That if a permittee's access to a salvage operation is suspended by virtue of an award made by arbitrators pursuant to § 244.81 or pursuant to an agreement, approved by the regional administrator, with a licensee, the term of the permit shall be extended by adding thereto a period equal to the period of such suspension. Rights granted to the United States shall be for such term as will enable a licensee to commence during either the calendar year in which the permit is issued or during one of the two next succeeding calendar years a salvage operation on lands administered by the Bureau, and to complete such salvage operation in accordance with the provisions of such authorization; normally such a licensee will be allowed only one year to complete a salvage operation plus not to exceed three months for the construction of any necessary access roads. In any event, a grant made to the United States under § 244.76 shall finally expire not later than four years and six months after the date when such grant is made.

§ 244.79 *Permittee's agreement with United States respecting compensation and adjustment of road use.* (a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the regional administrator will seek to arrive at an agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; a reasonable fee for use by a licensee for access to and the removal of forest products from salvage operations on lands administered by the Bureau; provisions for road maintenance; the use, in addition to the uses set forth in § 244.77, which the United States and its licensees may make of the road system involved; a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products derived from salvage operations conducted on lands administered by the Bureau; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the regional administrator may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such agreement, subsequent contracts for salvage operations on lands managed by the Bureau and tapped by such road system, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the agreement.

(b) The provisions of §§ 244.80 and 244.81 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 244.80 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee pursuant to §§ 244.70 to 244.92 to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 244.79, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(b) During the pendency of such arbitration proceedings, the licensee shall be entitled to use the road, right-of-way or land involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the regional administrator and the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the regional administrator and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which may accrue by reason of the licensee's use of the road, as the regional administrator may prescribe.

(c) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs any extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 244.77. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage, and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(d) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(e) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 244.81 *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (a) When the United States exercises the right received under §§ 244.70 to 244.92 to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct such licensee in such use. If there has been no agreement under § 244.79 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 244.82.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the salvage timber involved; the extent to which each of the parties may practicably use his resources in the conduct of other salvage operations; the extent to which the timber to be salvaged constitutes a threat to healthy timber; the extent to which Federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 244.82 *Arbitration procedure.* (a) As to arbitration proceedings relating to the terms or conditions of use of roads, rights-of-way or lands in Oregon:

(1) Within ten days after the delivery of a written request for arbitration under § 244.80 or § 244.81, each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(2) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 244.80 and 244.81.

(3) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 244.80 and 244.81 for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the regional administrator, either personally or by registered mail.

(4) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matters as may appear relevant to the arbitrators.

(b) Arbitration proceedings involving the terms or conditions of use of roads, rights-of-way or lands in California or Washington shall be in accordance with the respective State law, if any, is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.83 *Payment required for Government timber.* An applicant will be required to pay to the regional administrator, in advance of the issuance of the permit, the full stumpage value as determined by the regional administrator of the estimated volume of all timber to be cut, removed, or destroyed, in the construction or operation of the road on lands administered by the Bureau.

§ 244.84 *Payment to the United States for road use.* Where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a reasonable fee to be determined by the regional administrator: *Provided, however,* That this section shall not apply where payment for such road use to another permittee is required under §§ 244.70 to 244.92.

§ 244.85 *Bond in connection with existing roads.* An applicant for an emergency access permit to use an existing Government road which is under the administrative jurisdiction of the Bureau will be required, for the protection of such existing road, to execute a bond on Form 4-414 (a) in an amount to be determined by the regional administrator but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with §§ 244.70 to 244.92 and the terms and conditions of the permit.

§ 244.86 *Approval of permit.* Upon the applicant's compliance with the appropriate provisions of §§ 244.70 to 244.92 and if it is determined that the approval of the application will be in the public interest, the regional administrator may, in his discretion, issue an appropriate permit, upon Form 4-1213.

§ 244.87 *Terms and conditions of permit.* (a) As to all emergency access permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the regional administrator and making payment therefor.

(3) To take adequate precaution to prevent and suppress forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; to do no burning on or near the right-of-way without State permit during the seasons that permits are required but in any event to set no fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 244.80 to 244.82.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under § 244.76, to waive compensation for the value of the road, equivalent to the proportion that the amount

the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the regional administrator may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under §§ 244.70 to 244.92, to a reservation of rights-of-way for ditches and canals constructed under authority of the United States, and to a reservation of all fissionable source materials in accordance with the act of August 1, 1946 (60 Stat. 755).

(8) In the exercise of the rights granted by the permit, not to discriminate against any employee or applicant for employment because of race, creed, color or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the regional administrator may otherwise permit or direct, to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use: *Provided, however,* That the road and all usable road improvements shall be left in place.

(b) As to emergency access permits for the use of an existing road: In addition, every permittee to whom an emergency access permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the regional administrator may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 244.88 *Assignment of permit.* Any proposed assignment of an emergency access permit must be submitted in duplicate, within 90 days after the date of its execution, to the Regional Administrator for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 244.75 and 244.76; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 244.89 *Causes for termination of permittee's rights.* (a) The regional administrator in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under §§ 244.70 to 244.92 if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the regional administrator, in accordance with any requirement of such permit or knowing such representation to be false, or make such representation in reckless disregard of the truth.

(b) The regional administrator, in his discretion may elect to terminate any permit issued under §§ 244.70 to 244.92, if the permittee shall fail to comply with any of the provisions of such regulations or make default in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 10 days after service of written notice thereof by the regional administrator.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to §§ 244.70 to 244.92, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under §§ 244.70 to 244.92 to submit to and be bound by arbitration pursuant to §§ 244.79 to 244.81.

§ 244.90 *Remedies for violations by licensee.* (a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract which will require the licensee to comply with all the applicable provisions of §§ 244.70 to 244.92, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the regional administrator will take such action as may be appropriate under the provisions of the timber sale contract.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the regional administrator, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract. In such event the permittee shall be bound by the decision of the regional administrator subject, however, to a right of appeal pursuant to § 244.92 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative a permittee who believes that a licensee has violated the terms of the timber sale contract respecting the use of the permittee's roads may proceed against the licensees in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 244.91 *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 244.92 *Appeals.* An appeal, pursuant to the rules of practice, Part 221, of this chapter, may be taken from any final decision of the regional administrator, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

R. D. Searles,
Acting Secretary of the Interior.

June 16, 1952.

Note: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[F. R. Doc. 52-6735; Filed, June 19, 1952; 8:45 a. m.]

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~~Obsolete~~ Obsolete
Replaced by 1840
Replaced by 1927 (11/58)

Circular No. 1823

UNITED STATES
DEPARTMENT OF THE INTERIOR
Washington

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I --BUREAU OF LAND MANAGEMENT

PART 192--OIL AND GAS LEASES

Section 192.42(d) is amended to read as follows:

Sec. 192.42 Offer to lease, and issuance of lease. * * * *

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than 2,560 acres except where the rule of approximation applies, and may not be for less than 640 acres except in any one of the following instances:

(1) Where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey.

(2) Where the land is surrounded by lands not available for leasing under the act, except that where the tract was isolated as the result of a partial relinquishment of a lease, no lease offer will be received for the relinquished land other than one filed under the conditions prescribed in subparagraph (1) of this paragraph for a period of 60 days from and after the date of filing of the partial relinquishment.

(Sec. 32, 41 Stat. 450; 30 U.S.C. 189).

R. D. Searles
June 17, 1952 /sgd/ Acting Secretary of the Interior

Lands

Office Copy

See Circ. 1758, 1770, 1800 & 1824

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1824]

PART 259—DISPOSAL OF MATERIALS

DISPOSALS AND RIGHTS UNDER OTHER STATUTES; FREE-USE PRIVILEGE

In order to clarify the rights obtained under free use permits by political entities or agencies and individuals, associations or non-profit corporations as well as to provide for the disposition of proceeds received from sale of materials from school section lands in Alaska, the following amendments are made in Part 259.

1. Paragraphs (f) and (g) of § 259.3 are amended to read:

§ 259.3 *Disposals which must be made under other statutes; rights under other statutes.* * * *

(f) The purchaser of materials shall have a prior right to the materials in accordance with the terms and provisions of the contract of purchase as against any subsequent claimant or entryman of the land affected.

(g) The proceeds derived from such sales shall be deposited in the Treasury of the United States and shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials from school section lands in Alaska, reserved under the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as amended, shall be deposited in the United States Treasury for payment annually to the Territory of Alaska, pursuant to the act of August 31, 1950 (64 Stat. 571; 43 U. S. C. 1187).

2. Paragraphs (a) and (d) of § 259.21 are amended to read:

§ 259.21 *Free-use privilege; limitations.* (a) Any person, or any association or corporation not organized for profit, may be permitted to take and remove, without charge, materials subject to the act, for use other than for commercial or industrial purposes or resale. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same material by purchase. However, the materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, or similar rights obtained under the public land laws.

* * * * *

(d) A free-use permit may be issued to any Federal, State, or Territorial agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the materials to be severed, extracted, or removed, provided that the applicant makes a satisfactory showing to the regional administrator that such materials will be used for a public project. Such permits shall constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

* * * * *

(Sec. 1, 61 Stat. 681; 43 U. S. C. 1185)

R. D. SEARLES,
Acting Secretary of the Interior.

JUNE 19, 1952.

[F. R. Doc. 52-6957; Filed, June 25, 1952; 8:46 a. m.]

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Also see
Circ. 1834, 1842, 1844,
1847, 1864 + 1866
+ 1876
244.70-92. Circ. 1822

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular 1825]

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

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SUBPART K—RIGHTS-OF-WAY FOR FEDERAL IRRIGATION PURPOSES UNDER THE ACT OF DECEMBER 5, 1924

244.68 Statutory authority.

SUBPART L—RIGHTS-OF-WAY FOR TRANSMISSION LINES IN CONNECTION WITH BOULDER CANYON PROJECT UNDER THE BOULDER CANYON PROJECT ACT

244.69 Statutory authority.

SUBPART A—GENERAL REGULATIONS APPLICABLE TO ALL RIGHTS-OF-WAY PROVIDED FOR IN THIS PART [1]

AUTHORITY: §§ 244.1 to 244.20 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

DEFINITIONS

§ 244.1 *Definitions.* As used in §§ 244.1 to 244.69:

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "Regional Administrator" means regional administrator of the Bureau of Land Management.

(d) "Manager" means manager of the land office for the district in which the lands applied for are situated. For areas not included in a land district, "manager" means the regional administrator for the region of the Bureau of Land Management in which the land is situated.

(e) "Project" means the physical structures in connection with which the right-of-way is approved.

(f) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

(g) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.

(h) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.

(i) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

INDIAN LANDS

§ 244.2 *Indian lands.* The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 256.

APPLICATIONS [2]

§ 244.3 *Application.*[3] No special form of application is required. The application should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in Part 244 and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in Part 244. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the land office for the district in which the land is situated, or if there is no land office, it shall be filed with the Director, Bureau of Land Management, Washington, D. C. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 244.4 *Showing as to organization required of corporation.* (a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation other than a private corporation should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or by-laws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 244.5 *Showing as to citizenship required of individuals; showing by associations of individuals.* (a) An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 244.6 *Documents which must accompany application*—(a) *Maps.* Each application, other than a reservoir declaratory statement under § 244.30, must be accompanied by a map prepared on tracing linen and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipe lines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and

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[1] This part does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L. D. 513), with the consent of the agency having jurisdiction or control over the land.

[2] In addition to the material contained under this heading, the subpart relating to the particular type of right-of-way involved should be consulted. See Subparts B through L of this part.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statement or representation as to any matter within its jurisdiction.

recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2, which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.[4]

(8) Whenever it is found that a public-land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water.

See Cir. 1864

GENERAL PROVISIONS[5]

§ 244.7 *Nature of the interest granted; settlement on right-of-way.* (a) No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the regional administrator unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

(b) All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

§ 244.8 *Commencement of construction work in advance of approval of right-of-way; trespass.* (a) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies in advance of the approval of a right-of-way may be granted by the manager upon a satisfactory showing of the necessity for such action and upon a determination, after the request for permission has been cleared by all interested agencies of the Department, that such action is compatible with the public interest. Requests for such advance authority need not meet the formal requirements of §§ 244.3–244.5 and may be filed with the agency having supervision of the land involved, in which case a duplicate request must be filed in the office specified in § 244.3.

See Cir. 1894

(b) Any grant of advance permission is solely for the convenience of the applicant and is not a commitment by the Department that a right-of-way will be approved. The Department's authority in acting on a right-of-way application is not restricted in any way by the grant of advance permission or any requirements laid down in such grant of permission and the Department, without limitation, may impose additional or different requirements as conditions precedent to the approval of the right-of-way. A grant of advance permission is revocable at will, and the grantee assumes all the risk of operating under such permission.

See Cir. 1876

(c) Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 244.9 *Terms and conditions.* An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with existing and future regulations and State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way.

See Cir. 1876

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(c) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damage to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the right-of-way.

(g) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(j) That he shall at all times keep the manager informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

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[4] See appendix for form to be placed on maps.

[5] In addition to the material contained under this heading, the subpart relating to the particular type of right-of-way involved should be consulted. See Subparts B through L of this part.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not interfere in any way with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permitees, or lessees of any part of the right-of-way not actually occupied by the project, for necessary operations incident to such management, administration, or disposal.

(m) That there are reserved rights-of-way for reservoirs, dams, and other works which may thereafter be constructed for the development of hydro-electric power or irrigation, under authority of the United States, and that the use of the right-of-way for the purpose authorized shall be discontinued without liability or expense to the United States when found by the Secretary to be in conflict with such power or irrigation works.

(n) That there is reserved for the use of the United States pursuant to the provisions of the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. 1801 et seq.), all uranium, thorium, or other materials which have been or may hereafter be determined by the Atomic Energy Commission to be peculiarly essential to the production of fissionable materials contained in whatever concentration in the lands covered by the right-of-way, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby.

§ 244.10 *Proposed or existing national forest.* Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

§ 244.11 *National parks and monuments.* (a) The act of March 3, 1921 (41 Stat. 1353, 16 U. S. C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(b) Whenever a right-of-way is desired through any national park or monument for purposes other than those excepted by the act of March 3, 1921, or not otherwise expressly prohibited by law, the applicant must show to the satisfaction of the Director, National Park Service, that the location and use of the right-of-way for the purposes contemplated will not interfere with the uses and purposes for which the park or monument was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file such stipulations and bond as may be required by the Director, National Park Service. Ordinarily, such a right-of-way may be allowed only on a showing of absolute necessity.

§ 242.12 *Oregon and California Railroad and Coos Bay Wagon Road grant lands.* All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was revested in the United States by the act of June 9, 1916 (39 Stat. 218), and reconveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the regional administrator, in advance of construction, such sum of money as may be determined by him to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).[6]

§ 244.13 *Alaska.* All general right-of-way laws, and the regulations thereunder contained in this part, are applicable to Alaska.[7]

§ 244.14 *Approval of right-of-way.* (a) Where an application is complete and in conformity with the law and regulations and all required reports have been obtained and it is determined that the approval of the right-of-way will not be contrary to the public interest, including that of the Government, the manager will approve the right-of-way.[8]

(b) An application which does not conform with the law or regulations under which filed or the approval of which would be inconsistent with the public or Government interest, will be rejected.

§ 244.15 *Use of right-of-way*—(a) *Proof of construction.* A period of 5 years from the date of the approval of the right-of-way is usually allowed for construction unless a different period is provided by statute. Upon completion of construction, proof thereof should be submitted to the manager, consisting of a statement and certificate furnished by the holder of the right-of-way. The statement and certificate are embodied in Forms 5 and 6, which should be modified so as to be appropriate to the act and to the nature of the project.[9] If, in construction, a substantial deviation from the location shown on the original map is planned or made, the party in interest must file a duly executed relinquishment of the unused portion of the right-of-way accompanied by a map of amended location of the right-of-way for the project as actually constructed. The map of amended location must be prepared in accordance with § 244.6 (a) and must be filed before or as soon as possible after the deviation is made. The relinquishment may be prepared so as to become effective upon approval of the amended location. Any deviation made prior to such approval will be at the risk of the applicant.

(b) *Nonconstruction, abandonment, or nonuse.* Unless otherwise provided by law, rights-of-way are subject to cancellation by the Director for failure to construct within the period allowed and for abandonment or nonuse.

§ 244.16 *Revocation for violation of regulations or terms or conditions.* All rights-of-way approved pursuant to this part, except those granted for pipe lines pursuant to section 28 of the act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U. S. C. 185), shall be subject to cancellation by the Director for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be canceled except on the issuance by the Director of a specific order of cancellation.

§ 244.17 *Change in jurisdiction over or disposal of lands.* (a) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(b) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

§ 244.18 *Transfer of right-of-way.* Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a right-of-way acquired under any of the acts, except the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946–949), must be filed in triplicate in accordance with § 244.3 for approval; must be accompanied by the same showing of qualifications of the assignee as is required of applicants; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the right-of-way. No assignment will be recognized unless and until approved.

§ 244.19 *Disposal of property on termination of right-of-way.* Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

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[6] The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

[7] See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U. S. C. 23), and 30 Op. Atty. Gen. 387 (1915).

[8] Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the manager is required to clear the application with such agency.

[9] See appendix for forms.

§ 244.20 *Appeals.* An appeal pursuant to the rules of practice (43 CFR Part 221) may be taken from any decision of the manager to the Director, and from the Director to the Secretary.

RENTAL CHARGES

§ 244.21 *Payment required; exceptions; default; revision of charges.* (a) ~~Unless a higher rate is prescribed in the approval of the right-of-way, the charge for use and occupancy of public and reservation lands for rights-of-way for telephone, telegraph, and power transmission lines, water-pipe lines, ditches or canals under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959); telephone, telegraph, and power transmission lines under the act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961); tramroads under the act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956); oil and gas pipe lines under section 28 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449), as amended August 21, 1935 (49 Stat. 678; 30 U. S. C. 185); and water-pipe lines, ditches, flumes, tunnels, or canals under section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), shall be at the rate of five dollars ($5) per mile or fraction thereof per calendar year or fraction thereof for rights-of-way not over 100 feet in width and one dollar ($1) per mile or fraction thereof for each additional 20 feet or fraction thereof in width.~~

See Circ 1876

(b) The charge for use and occupancy of public and reservation lands for reservoirs, dams, water plant and powerplant sites, well sites, and similar purposes under the act of February 15, 1901; sites for pumping stations or other structures authorized under section 28 of the Mineral Leasing Act, as amended; and dams, reservoirs, and water-plant sites under section 4 of the act of February 1, 1905, shall be based on the value of the land and the use to which it is to be put, but in no case will the minimum charge be less than five dollars ($5) per calendar year or fraction there of. The charge for micro wave relay and communication sites other than radio and television broadcast sites shall be based upon the value of the land, but in no case will the annual charge be less than fifty dollars ($50) per site. The charge for radio and television broadcast sites shall be based on the value of the land but in no case will the annual charge be less than the following:

Stations not over:	
1,000 watts input power	$75.00
2,500 watts input power	100.00
5,000 watts input power	200.00
10,000 watts input power	250.00
20,000 watts input power	300.00
All others	450.00

(c) No rental charge will be required for the use and occupancy of public or reservation lands under a right-of-way authorizing such use and occupancy exclusively for irrigation projects, municipally operated projects, non-profit or REA cooperative projects, or when the use is by a Government agency.

(d) (1) There shall be remitted with the application the amount provided as the rental for a calendar year or fraction thereof.

(2) Where the application is for a reservoir, dam, well, or plant sites, etc., the sum of five dollars ($5), the minimum charge specified for such cases, shall be remitted with the application.

(e) The holder of the right-of-way thereafter shall pay, on or before the first day of each calendar year, the rental charges for that calendar year in accordance with paragraphs (a) and (b) of this section. If the rental charge is not paid when due, and such default shall continue for thirty days after the first day of January, action may be taken to cancel the right-of-way. After default has occurred, no structures, buildings, or other equipment may be removed from the right-of-way except upon written permission first obtained from the regional administrator.

See Circ 1876

(f) ~~At any time not less than five years after either the approval of the right-of-way or the last revision of rental charges thereunder, the regional administrator may review such charges and impose such new charges as he may decide to be reasonable and proper commencing with the ensuing calendar year.~~

(g) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department. (31 Stat. 790, 36 Stat. 1253, 28 Stat. 635, Sec. 4, 33 Stat. 628, Sec. 28, 49 Stat. 678; 43 U. S. C. 959, 961, 956, 16 U. S. C. 524, 30 U. S. C. 185)

SUBPART B—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR CANALS, DITCHES, AND RESERVOIRS UNDER THE ACT OF MARCH 3, 1891, AS AMENDED [10] [11]

AUTHORITY: §§ 244.22 to 244.28 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.22 *Statutory authority.* (a) Section 18 of the act of March 3, 1891 (26 Stat. 1101), as amended by the acts of March 4, 1917 (39 Stat. 1197), and May 28, 1926 (44 Stat. 668; 43 U. S. C. 946) authorizes the Secretary to grant rights-of-way for irrigation and drainage purposes over public lands and reservation to the extent of the ground occupied by the water of any reservoirs and any canals and laterals and 50 feet on each side of the marginal limits thereof and such additional right-of-way as may be deemed necessary for the proper operation and maintenance of said reservoirs, canals, and laterals.

(b) Section 19 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 947), provides that a map of the canal or ditch and reservoir must be filed within twelve months after the location of ten miles of a canal if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States; that upon the approval thereof by the Secretary, the same shall be noted upon the records and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

(c) Section 20 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 948), provides that this act shall apply to all canals, ditches, or reservoirs theretofore or thereafter constructed, whether by corporations, individuals, or association of individuals, on the filing of the certificates and maps as therein provided; that if any section of the project is not completed within 5 years after location, the right-of-way shall be forfeited as to the uncompleted canal, ditch, or reservoir, to the extent that the same is not completed at the date of forfeiture.

(d) Section 21 of the act of March 3, 1891 (26 Stat. 1102; 43 U. S. C. 949), provides that nothing in this act shall authorize the occupancy of such right-of-way except for the purpose for which it was approved, and then only so far as may be necessary for the construction, maintenance, and care of the project.

§ 244.23 *Pipelines, flumes, and conduits included; use of materials on adjacent lands.* (a) The act of March 3, 1891, as amended, is applicable to rights-of-way for pipelines, flumes, or other conduits, although they are not specifically mentioned in the act, if water is conveyed primarily for irrigation or drainage purposes.

(b) Material on adjacent lands: The word "adjacent", as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D. 566). These decisions were rendered under the Railroad Right-of-Way Act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 934), and are applied to the act of March 3, 1891, since the wording with respect to the use of material is the same.

§ 244.24 *Use subsidiary to main purpose of irrigation.* Section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), authorizes the use of rights-of-way approved under the act of March 3, 1891, for purposes subsidiary to the main purpose of irrigation.

§ 244.25 *Caretaker's building sites.* The act of March 1, 1921 (41 Stat. 1194; 43 U. S. C. 950), authorizes the Secretary, except as to lands within national forests, to grant permits or easements for not to exceed 5 acres of ground adjoining the right-of-way at each of the locations, to be determined by the Secretary, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by the act of March 3, 1891, as amended.

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[10] See Solicitor's opinion of July 16, 1942 (58 L. D. 29) for a discussion of the applicability of various acts relating to rights-of-way for canals, ditches, and reservoirs.

[11] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

§ 244.26 *Showing required for additional right-of-way.* The act of May 28, 1926 (44 Stat. 668; 43 U. S. C. 946), amended section 18 of the act of March 3, 1891, so as to authorize, if needed, a right-of-way additional to the 50 feet allowed by the section for operation and maintenance of reservoirs, canals, ditches, and laterals. To obtain such additional right-of-way, an explanatory showing must accompany the application. This should consist of a statement by the applicant's engineer or surveyor setting forth succinctly the extent of the additional right-of-way required and the necessity therefor. The additional right-of-way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right-of-way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

§ 244.27 *Procedure when unsurveyed land is involved.* (a) Maps filed under the said act, as amended, showing canals, ditches, laterals, and reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps conform to these regulations, but the approval will only relate to that portion of the right-of-way traversing the surveyed land.[12]

(b) Maps showing canals, ditches, laterals, and reservoirs lying wholly on unsurveyed lands may be received and placed on file in the Bureau of Land Management and the proper land office for general information. The date of filing will be noted thereon; but the maps will not be approved as the act makes no provision for the approval of any but maps showing locations on surveyed lands. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified in the act, and if the maps are regular in all respects they will receive the manager's approval.

§ 244.28 *Segregated reservoir sites.* The act of February 26, 1897 (29 Stat. 599; 43 U. S. C. 664), permits the approval of applications under the act of March 3, 1891, for rights-of-way upon reservoir sites reserved under authority of the act of October 2, 1888 (25 Stat. 526; 43 U. S. C. 662), and August 30, 1890 (26 Stat. 371, 391; 43 U. S. C. 662).

Subpart C—Reservation of Public Lands for Reservoirs for Watering Livestock[13]

Authority: §§ 244.29 to 244.37 issued under 29 Stat. 484, 42 Stat. 1437; 43 U. S. C. 952–955.

§ 244.29 *Statutory authority.* (a) By the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952–955), it is provided that any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding 160 acres, so long as such reservoir is maintained and water kept therein for such purpose. The act does not apply to lands in grazing districts, and applications for stock-watering reservoirs on such lands should be filed under section 4 of the Taylor Grazing Act (48 Stat. 1271; 43 U. S. C. sec. 315c) and 43 CFR Part 161.

(b) Section 1 of the act of January 13, 1897, as amended by the act of March 3, 1923 (42 Stat. 1437; 43 U. S. C. 952), authorizes the Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, to grant permission to fence reservoirs constructed under the act of January 13, 1897, in order to protect livestock, to conserve water, and to preserve its quality and conditions, provided, that such reservoir shall be kept open to the free use of any persons desiring to water animals of any kind.

§ 244.30 *Declaratory statement.* To apply for a reservoir site under §§ 244.29 to 244.37 the applicant must file with the manager a declaratory statement drawn in accordance with Form 7.[14] No other application is necessary.

§ 244.31 *Action on declaratory statements; size, location, and number of reservoir sites.* For the filing of the reservoir declaratory statement a fee of $1 will be charged (R. S. 2238; 43 U. S. C. 82). In acting upon these statements the following general rules will be applied:

(a) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity, not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity, not more than 80 acres can be reserved. For reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity, not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more, 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, and troughs, the regulations requiring a minimum capacity of 250,000 gallons may be waived upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs and facilities to properly accommodate all cattle likely to water at the place in question.

(b) Not more than 160 acres shall be reserved for this purpose in any section.

(c) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(d) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(e) Lands so reserved shall be kept open to the free use of any person desiring to water animals of any kind. If the lands so reserved are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(f) Notwithstanding his action in accepting any such declaratory statement, the manager will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

§ 244.32 *Time for construction.* The reservoir must be constructed and completed within 2 years after the filing of the declaratory statement; otherwise the right-of-way will be subject to cancellation.

§ 244.33 *Map of constructed reservoir.* After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped showing its location with relation to the public land surveys. The map must be prepared in accordance with the requirements of § 244.6 and be filed with the manager and must bear Forms 8 and 9.[15]

§ 244.34 *Approval of constructed project.* The map and papers will be examined to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory, they will be approved, and the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. When such reservation is made the manager will make the proper notations on his records and report the making thereof promptly to the Director.

§ 244.35 *Annual proof of maintenance.* In order that this reservation shall be continued, it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required, during the month of January of each year, to file with the manager a statement to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 10[16] will be used for this statement. Upon failure to file such statement, steps will be taken looking to the revocation of the reservation of the lands.

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[12] By letter of August 21, 1937, approved by the Department in the case of the Twin Lakes Reservoir and Canal Company (Denver 045465), it was held that a right-of-way may be acquired under the 1891 act, by actual construction of a project in advance of the filing of an application and approval of the right-of-way over unsurveyed lands, upon the same principle applied to railroads under the act of March 3, 1875 (18 Stat. 482; 43 U. S. C. 934–939).

[13] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[14] See appendix for forms.

[15] See appendix for forms.

§ 244.36 *Procedure when unsurveyed land is involved.* (a) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bare when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary (§ 244.33).

(b) Any reservation made pursuant to the act of Jauary 13, 1897, secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and §§ 244.29 to 244.37 shall be preserved and established by subsequent public-land surveys and approved plats thereof. Therefore, when the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the line of the official survey, showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions or aliquot parts of subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(c) An annual statement of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in §§ 244.29 to 244.37 shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

§ 244.37 *Application to fence reservoir; plat required.* Any person, company, or corporation desiring to secure the benefits of the act of March 3, 1923, should file in accordance with § 244.3 an application, duly corroborated by at least two disinterested witnesses, setting forth such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and conditions. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind, and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range. There shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

SUBPART D—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR TELEPHONE AND TELEGRAPH LINES, TRANSMISSION LINES, RADIO AND TELEVISION SITES, AND FOR PIPE LINES, CANALS, DITCHES, AND WATER PLANTS UNDER THE ACTS OF FEBRUARY 15, 1901 AND MARCH 4, 1911[17]

AUTHORITY: §§ 244.39 to 244.47 issued under 31 Stat. 790, 36 Stat. 1253; 43 U. S. C. 959, 961.

§ 244.39 *Statutory authority.* (a) The act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.[18]

(c) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U. S. C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3 (11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D. C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

§ 244.40 *Applications for lands in national forests, and other reservations.* (a) Applications under the act of February 15, 1901,[19] for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 244.3.

(b) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof.[20]

§ 244.41 *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (a) All applications for rights-of-way for purposes specified in the act of February 15, 1901, must be submitted thereunder, except that where it is sought to acquire a right-of-way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1101; 43 U. S. C. 946–949), and section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U. S. C. 951), the application must be submitted under the 1891 and 1898 acts, in accordance with the applicable regulations in this part.

(b) An application may be filed under the act of February 15, 1901, for a stock-watering reservoir site. Rights-of-way will not be approved for stock-watering reservoirs on wildlife refuges. An application under the act for a "water plant" site or for a pipeline right-of-way may include an area for a well to supply the water; but if, because the lands affected are within a grazing district established under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315 et seq.), as amended, or for any other reason, the granting of a right-of-way for a stock-watering reservoir site, or for a water plant site or for a pipeline would adversely affect the interest of the Government, the application therefor will not be allowed. If the lands affected are within a grazing district, an application for a stock-watering reservoir or water well site should be filed under section 4 of said act of June 28, 1934, if the applicant is qualified under the section and if the reservoir or well is necessary to the care and management of the permitted livestock and primarily for that purpose. Regulations under the said section 4 are contained in 43 CFR 161.14.

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[16] See appendix for forms.

[17] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[18] The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

[19] See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 472).

[20] See 29 Op. Atty. Gen. 303.

(c) Applications for rights-of-way for telephone, telegraph, and power transmission lines may also be submitted under either the act of February 15, 1901, or the act of March 4, 1911, in accordance with the applicable regulations contained in this part. Applications for radio, television and other forms of communication transmitting, relay and receiving structures and facilities should be submitted under the act of March 4, 1911, as amended.

(d) Any application under the act of March 4, 1911 for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

§ 244.42 *Plant sites; buildings to be platted on maps.* (a) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4[21] by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land surveys.

(b) If the application is for a power plant site it must also contain a statement giving a description of the proposed power plant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the power plant is to be interconnected with other generating facilities owned by the applicant or others; and whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes.

§ 244.43 *Transmission lines.* When an application is made for a right-of-way for a transmission line, it must also contain the following:

(a) A description of the plant or connecting generating plants which generate or will generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the Director, the character, capacity, and location of such plants.

(b) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps). If the line is to have a nominal voltage of 33 kv or over, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(c) A statement as to the distance from the nearest transmission or distribution lines of any other person, corporation, association, municipality, or other agency engaged in the sale of power, or a statement that there are no such lines existing or contemplated within 10 miles of any part of the transmission line of which the line for which a right-of-way is requested forms a part.

§ 244.44 *Terms and conditions.* By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 244.9:

(a) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact, and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(b) To make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the approved right-of-way, and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized, or any such installation, line, or facility thereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve him from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(c) That the transmission line for which the right-of-way is authorized shall not be used for the transmission of any power generated otherwise than by and at the connecting generating plant until the regional administrator shall have given written authority for such use and then only on the terms and conditions expressed in such written authority.

(d) To allow the Department of the Interior, in the case of a right-of-way applied for on or after October 14, 1948, and covering a right-of-way for an electrical transmission line having a nominal voltage of 33 kv or more, to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the right-of-way (subsequently referred to in this paragraph as "holder") for the transmission of electrical power in connection with the holder's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(1) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the holder, and the holder shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the holder for the transmission of electrical power in connection with the holder's operations, and, if so, the extent of such surplus capacity.

(2) In order to utilize any surplus capacity certified by the holder to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits. However, for the purpose of diminishing line losses and for other reasons, the Department shall have the option, in

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[21] See appendix for forms.

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lieu of requiring the holder to transmit power, to require that the holder deliver power to customers of the Department from the holder's own generating facilities in exchange for a like amount of power to be delivered by the Department to the holder at points on the holder's line or on his transmission system, to the extent of the unused capacity of the line for which a right-of-way is granted.

(3) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the holder's line will not be impaired.

(4) After any interconnection is completed, the holder shall operate and maintain his line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the holder's control between the holder's line and the interconnecting facilities provided by the Department.

(5) The interconnected power systems of the Department and the holder will be operated in parallel.

(6) The transmission of electrical power by the Department over the holder's line will be effected in such manner and quantity as will not interfere unreasonably with the holder's use and operation of the line in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(7) The holder will not be obligated to allow the transmission over his line by the Department of electrical power to any person receiving service from the holder on the date of the filing of the application for a right-of-way, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(8) The Department will pay to the holder an equitable share of the total monthly cost of maintaining and operating the part of the holder's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the holder's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(9) If, at any time subsequent to a certification by the holder that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the holder may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the holder's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(10) If, during the existence of the right-of-way, the holder desires reciprocal accomodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accomodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the holder's line.

(11) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

§ 244.45 *No rights acquired prior to filing and approval of application.* Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through the public lands and reservations must be filed and approved before any rights can be claimed thereunder.

§ 244.46 *Unsurveyed lands.* Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

§ 244.47 *Expiration and renewal of right-of-way.* Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner canceled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 244.3, a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

SUBPART E—RIGHTS-OF-WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES, UNDER THE ACT OF FEBRUARY 1, 1905 [22]

AUTHORITY: §§ 244.48 to 244.51 issued under sec. 4, 33 Stat. 628; 16 U. S. C. 524.

§ 244.48 *Statutory authority.* Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U. S. C. 524), grants rights-of-way through national forests to citizens and corporations of the United States, for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.

§ 244.49 *When construction may commence.* No construction will be allowed in national forests until an application for right-of-way has been regularly filed in accordance with §§ 244.1 to 244.20, 244.48 to 244.51, and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

§ 244.50 *Water plant structures.* When application is made for a right-of-way for water plants, § 244.42 should be followed, with appropriate changes in the prescribed forms.

§ 244.51 *Procedure when unsurveyed land is involved.* Maps showing reservoirs, canals, water plants, and other structures wholly upon unsurveyed lands, will be received and acted upon in the manner prescribed for surveyed lands.

SUBPART F—RIGHTS-OF-WAY UNDER THE ACT OF JANUARY 21, 1895, OVER PUBLIC LANDS FOR TRAMROADS AND OTHER ROADS FOR LOGGING AND MINING PURPOSES,[23] EXCEPT LOGGING ROADS OVER REVESTED AND RECONVEYED AND INTERMINGLED PUBLIC LANDS IN OREGON [24]

AUTHORITY: Secs. 244.52 and 244.53 issued under 28 Stat. 635; 43 U. S. C. 956.

§ 244.52 *Statutory authority.* The act of January 21, 1895 (28 Stat. 635; 43 U. S. C. 956), authorizes the Secretary under such general regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U. S. C. 525, 43 U. S. C. 665, 958). Before a right-of-way is issued under this section, the officer authorized to issue it must obtain the clearance of the regional administrator. Where the regional administrator determines it to be in the public interest, he will require applicants under this section to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under 43 CFR,

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[22] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[23] In an opinion of July 16, 1942 (58 I. D. 29), the Solicitor of the Department of the Interior held that the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), superseded the part of the 1895 act authorizing rights-of-way for canals and reservoirs.

[24] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

Part 115 with appropriate modifications to meet local conditions: *Provided*, That where the land over which the right-of-way is requested is under the jurisdiction of an agency other than the Bureau of Land Management, the regional administrator shall make such requirement only with the concurrence of the authorized officer of such agency. The regional administrator may require an applicant for or holder of a tramroad right-of-way to execute a bond on Form 4–414, modified to refer to the applicable sections of this part, in an amount, not less than $500 per mile or fraction thereof, to be determined by the regional administrator conditioned on compliance with §§ 244.1 to 244.21 and 244.52 and 244.53. The arbitration procedures involved in the stipulations shall be in accordance with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

§ 244.53 *Tramroads defined.* Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

CROSS REFERENCE: Applications for logging road permits over revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands and intermingled public lands administered by the Bureau of Land Management which are in and west of Range 8 East, Willamette Meridian, Oregon, must be made under 43 CFR, Part 115.

SUBPART G—TRANSFERS OF PUBLIC LANDS AND RESERVATIONS FOR HIGHWAYS, ROAD BUILDING MATERIAL AND MAINTENANCE SITES, ROADSIDE AND LANDSCAPE DEVELOPMENT AREAS AND FLIGHT STRIPS, UNDER THE FEDERAL AID HIGHWAY ACT [25]

AUTHORITY: §§ 244.54 to 244.56 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.54 *Statutory authority*—(a) *Highways and material sites.* (1) Section 17 of the Federal Aid Highway Act of November 9, 1921 (42 Stat. 216; 23 U. S. C. 18), authorizes the transfer of public lands and reservations of the United States to the State highway departments on determination by the Secretary of Commerce [26] that such lands are necessary for the right-of-way for any highway or forest road or as a source of materials for the construction and maintenance of such roads and highways, and after his request for such transfer with a map showing the portions of such lands which it is desired to appropriate.[27] The section does not authorize transfers to Territories.

(2) This statute provides that if within a period of 4 months after such filing the Secretary of the department supervising the administration of such land or reservation shall not have certified to the Secretary of Commerce that the proposed transfer of such lands is contrary to public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land or materials may be appropriated and transferred to the State highway departments for such purposes.[28] If and when the need for any such land or materials shall no longer exist, notice of that fact must be given by the State highway department to the Secretary of Commerce, and such lands or materials will immediately revert to the control of the Secretary of the Department from which they had been appropriated.[29]

(b) *Roadside and landscape development areas.* The act of June 8, 1938 (52 Stat. 633; 23 U. S. C. 10b), authorizes right-of-way for roadside and landscape development under section 17 of the Federal Aid Highway Act.

(c) *Flight strips.* Section 8 of the act of November 19, 1941 (55 Stat. 767; 23 U. S. C. 108), authorizes rights-of-way under the Federal Aid Highway Act for flight strips adjacent to public highways or roadside-development areas along such highways.

(d) *Extent of grant.* Rights-of-way granted pursuant to the Federal Aid Highway Act, as supplemented and amended, do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of the highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted pursuant to the Federal Aid Highway Act, as supplemented and amended, except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under §§ 244.39 to 244.47, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under §§ 244.60 to 244.66, inclusive, for pipe line facilities subject to this exception. Where the holder of the right-of-way consents to the construction of usual highway facilities, as stated above, such holder shall be responsible for compliance with § 244.9 in connection with the construction and maintenance of such facilities.

§ 244.55 *Filing of application.* Where a right-of-way is desired under the provisions of section 17 of the act of November 9, 1921, and the amendment or supplements thereto, for any of the purposes mentioned in § 244.54, an application and maps should be filed in the manner prescribed by §§ 244.3 and 244.6 (a). Such application should be filed by the State highway department of the particular State and not by any political subdivision of the State. No application will be received by the Bureau for rights-of-way affecting lands entirely within a national forest or an Indian reservation.

§ 244.56 *Action on application.* Upon receipt of an application filed under section 17 of the act of November 9, 1921, or acts supplemental thereto, which affects unpatented lands or patented lands, acquired by the United States, under the jurisdiction of this Department, Bureau procedure relating to rights-of-way will be followed, and in addition the manager will return a duplicate map or maps to the State highway department which will forward them to the Secretary of Commerce for his determination that the lands are necessary for the purposes desired, as required by the act. Upon the receipt of such determination, if all else be regular, the right-of-way will be approved.

SUBPART H—RIGHTS-OF-WAY FOR THE CONSTRUCTION OF HIGHWAYS OVER PUBLIC LANDS UNDER R. S. 2477

AUTHORITY: §§ 244.57 to 244.59 issued under R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201.

§ 244.57 *Statutory authority.* R. S. 2477 (43 U. S. C. 932), grants rights-of-way for the construction of highways over public lands, not reserved for public uses.

§ 244.58 *Effective date and extent of grant.* (a) Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. No application should be filed under R. S. 2477, as no action on the part of the Government is necessary. Rights-of-way granted by R. S. 2477 do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. Where the holder of the highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way

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[25] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[26] Originally the Federal Aid Highway Act provided that various functions should be administered by the Secretary of Agriculture. Through a series of transfers, the latest of which is 1949 Reorganization Plan No. 7, effective August 19, 1949 (14 F. R. 5228, 63 Stat. 1070), these functions have vested in the Secretary of Commerce.

[27] Considered as including maintenance and stock-pile sites.

[28] By decision of the Secretary, Nevada Department of Highways, A.24151, September 17, 1945, it was held that the language of the act imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

[29] Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau of Land Management.

244.63 superseded by Circ. 1847

granted by R. S. 2477, except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than two miles long and are not part of any other pipe line crossing public lands. Applications shall be made under §§ 244.39 to 244.47, inclusive, with respect to any right-of-way for an electric transmission facility subject to this exception, and under §§ 244.60 to 244.66, inclusive, for pipe line facilities subject to this exception.

(b) Holders of grants under R. S. 2477 shall be subject to the terms and conditions of the following paragraphs of § 244.9 (b), (c), (d), (e), (i), (k), (n). Where the holder of the highway consents to the construction of usual highway facilities, as provided above, such holder shall be responsible for compliance with the designated paragraphs of § 244.9 in connection with the construction and maintenance of such facilities.

§ 244.59 *Procedure when reserved land is involved.* When a right-of-way is desired for the construction of a highway under R. S. 2477, over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, an application should be made in accordance with § 244.3 for consideration of the revocation or modification of the reserve so as to permit the operation of the statute and construction or establishment of the highway. Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected. In such case a serial number will not be assigned to the application but it will be transmitted together with the map and print copies to the Bureau of Land Management immediately. Unless and until the reservation shall have been revoked or modified so as to permit the construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve, no rights to establish or construct the highway will be acquired by reason of the filing of such application.

Subpart I—Rights-of-Way Through Public Lands and Reservations for Oil and Natural Gas Pipelines and Pumping Plant Sites Under the Mineral Leasing Act [30]

AUTHORITY: §§ 244.60 to 244.66 issued under sec. 28, 49 Stat. 678; 30 U. S. C. 185.

See Circ 1866

§ 244.60 *Statutory authority.* Section 28 of the act of February 25, 1920 (41 Stat. 449), as amended by the act of August 21, 1935 (49 Stat. 678; 30 U. S. C. 185), authorizes the Secretary to grant rights-of-way through public lands, including the forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of the act (41 Stat. 437; 30 U. S. C. 22, 48, 181) to the extent of the ground occupied by the said pipeline and 25 feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by him, and upon the express conditions that such pipeline shall be constructed, operated and maintained as a common carrier and that the pipeline holder shall accept, convey, transport, or purchase without discrimination oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amount as the Secretary of the Interior may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.[31]

§ 244.61 *Who may file application.* Application may be filed by citizens of the United States, associations of such persons, any corporation organized under the laws of the United States, or of any State or Territory, and municipalities.

§ 244.62 *Common carrier stipulation; oil pipelines.* Each application for an oil pipeline right-of-way must include the following stipulation:

See Circ 1866

> The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

§ 244.63 *Common carrier stipulation; natural gas pipelines.* Each application for a natural gas pipeline right-of-way must include the following stipulation:

(a) The applicant agrees that it will operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act as now or hereafter amended and pertinent regulations heretofore or hereafter adopted thereunder and that it will transport natural gas for others, whether such gas is produced from Government lands or not, at reasonable rates and subject to conditions to be allowed or determined by the regulatory agency having jurisdiction over such transportation: *Provided*, That no condition shall be imposed by the applicant which is inconsistent with the applicant's obligation to operate its pipeline as a common carrier. The applicant agrees to provide common carrier transportation service requested, including firm service, as follows:

(1) When any request for the transportation of natural gas is made and there is unused capacity in the applicant's pipeline, the applicant agrees promptly, or within such time as may be fixed by the Secretary, (i) to file with the regulatory agency having jurisdiction over such matter an application for issuance of authority to the applicant to transport such gas, to the extent of the unused capacity of the pipeline, if an application for such authority is required by the law applicable to such agency or by the rules or regulations of such agency, and, upon the issuance of such authority, to commence to render service to the extent of the unused capacity of the pipeline pursuant to the terms and conditions of such authority, or (ii) where no such authority need be obtained in advance of transportation, to file a rate schedule or tariff with such regulatory agency and to commence to render transportation service at the rates and subject to the conditions allowed or determined by such agency. Nothing in this subparagraph shall be construed to prevent any right of appeal which the applicant may have under applicable law from the issuance of authority under clause (i) or from any determination of rates or conditions under clause (ii) of the preceding sentence, but no appeal taken by the applicant shall delay the commencement of transportation service by the applicant as provided in that sentence.

(2) If there is no unused capacity or insufficient unused capacity in the applicant's pipeline at the time when the request for transportation is made, the applicant agrees promptly, or within such time as may be fixed by the Secretary, to file with any regulatory agency having jurisdiction over such matter an application for issuance of authority to the applicant to increase the capacity of its pipeline sufficiently to enable the applicant to provide for the transportation of the natural gas proposed for shipment, but the applicant shall not be required to apply for the issuance of authority to increase the capacity of its pipeline to such an extent that such increased capacity, when added to any increased capacity theretofore provided pursuant to this stipulation, will exceed that capacity of the pipeline not devoted to common carrier transportation at the time the request for common carrier transportation is made. The applicant shall be required to file an application for authority to increase the capacity of its pipeline only if the prospective shipper joins in such application and only if the prospective shipper advises the applicant in writing that at any hearing upon such application the shipper shall have the burden of showing an adequate gas supply, markets, and other relevant facts necessary to establish, consistent with applicable law, the economic feasibility of the facilities and investment required to provide necessary added capacity and to justify the issuance of authority for the construction of such facilities, and that the shipper agrees to offer natural gas for transportation through the applicant's pipeline, upon completion of the construction of the increased capacity within a reasonable time, in such amounts and for such period of time as will be sufficient to pay the construction and operation costs allocable to his shipments plus a reasonable return on the investment allocable to such shipments. Applicant further agrees to proceed diligently to provide the increased capacity for common carrier transportation, the construction of which is authorized by any final order of any regulatory agency having jurisdiction over such transportation, provided the applicant will not be required to construct such additional facilities until it is able to obtain necessary outside funds, if any are needed, on terms submitted to and sanctioned by the regulatory agency in connection with the application to obtain such authority, but nothing herein contained shall be construed as a waiver of any right which the applicant may have under applicable law to appeal from such final order.

Upon completion of construction under such authorization, applicant will take all steps necessary, including the filing of rate schedules or tariffs where required, to commence service pursuant to the terms and conditions of the authorization and at the rates and subject to the conditions allowed or determined by the agency. Nothing in the preceding sentence shall be construed to prevent any right of appeal which the applicant may have under applicable law from any determination of rates or conditions by the regulatory agency, but no such appeal taken by the applicant after the completion of construction, shall delay the commencement of transportation service by the applicant as provided in that sentence.

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[30] In addition to the material under this heading, the general regulations under Subpart A of this part should be consulted.

[31] By opinion of the Attorney General of January 3, 1941 (40 Op. Atty. Gen. 9), and departmental decision, *Chiles P. Plummer*, A. 23988, February 24, 1945, this statute was construed as not applying to purchased or acquired lands as they are not considered public lands within the meaning of the act.

(b) Any rate schedule or tariff filed under paragraph (a) shall include the provisions set forth in paragraph (a) of this stipulation and no change shall be made in paragraph (a) without first obtaining the approval of the Secretary of the Interior. A copy of such rate schedule or tariff and of any amendment to, or revision of, a rate schedule or tariff shall be furnished to the Secretary of the Interior when the original is filed with the regulatory agency.

(c) None of the specific provisions of this stipulation shall be construed to limit in any way the obligation of the applicant to operate its pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act as now or hereafter amended and pertinent regulations heretofore or hereafter adopted under that act or any other obligations imposed on the applicant by such act or regulations, and any violation of such obligation shall be ground for the cancellation of the right-of-way, as provided in the Mineral Leasing Act.

Every applicant for a natural gas pipeline right-of-way whose application is pending before the Department on July 27, 1951, without final action thereon having been taken by the Department, shall be required to execute and file the stipulation prescribed in this section within 30 days after that date.

§ 244.64 *Use of pipeline.* The applicant shall state in the application the specific use, within the purview of the act, to which the pipeline is to be put, and any approval of the right-of-way shall be limited to such use, unless otherwise stated in the approval. No change in the use of the pipeline from that authorized by the approval of the right-of-way shall be allowed except as follows:

(a) In the case of pipelines engaged in interstate transportation, a change may be made only with approval first obtained from the regional administrator, and upon such terms and conditions as he may prescribe as a prerequisite to the approval of the change of use. If the regional administrator does not disapprove or otherwise act upon an application for a change in use by the end of the forty-fifth day after the application is filed, he shall be deemed to have approved it without conditions other than those previously existing.

(b) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of the pipeline for the transportation of products within the purview of the act, from that specified in the approval of the right-of-way, provided, written notice of such change is filed with the manager not less than 15 days in advance of the actual change of use. Such notice must be accompanied by a showing as to whether the change in use is to be temporary or permanent, and a statement that such change will not result in any hardship or injustice to persons operating under Federal leases who may be dependent on the pipeline as the means of transportation of their products to existing markets, and must be accompanied by the consent in writing of such lessees to the change of use.

§ 244.65 *Approval of right-of-way.* The approval of such rights-of-way shall be subject to the express condition that the use of the pipeline for the transportation of oil, gas, or other similar natural products, shall be limited to such products produced in conformity with State and Federal laws, including laws prohibiting waste.

§ 244.66 *Pumping plant site.* A site for a pumping station or other structures reasonably necessary to the operation of a pipeline on a right-of-way approved under section 28 of the act of February 25, 1920, or as amended by the act of August 21, 1935, may be granted under the same section (36 Op. Atty. Gen. 480). When an application is made for a right-of-way for a site, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4[32] by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act.

SUBPART J—RIGHTS-OF-WAY OVER LANDS SUBJECT TO A MINERAL LEASE

§ 244.67 *Statutory authority; applications.* Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U. S. C. 186), provides in part:

(a) That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(b) Where another statutory provision covers the type of right-of-way desired, applications shall be made in accordance with such statute and the applicable regulations.

(c) Where there is no other statutory provision covering the type of right-of-way desired, applications shall be filed in accordance with §§ 244.1 to 244.21, inclusive (41 Stat. 449; 30 U. S. C. 186).

SUBPART K—RIGHTS-OF-WAY FOR FEDERAL IRRIGATION PURPOSES UNDER THE ACT OF DECEMBER 5, 1924

§ 244.68 *Statutory authority.* Section 4, subsection P, of the act of December 5, 1924 (43 Stat. 704; 43 U. S. C. 417), provides that where, in the opinion of the Secretary, a right-of-way over public land is required in connection with a reclamation project, the Secretary may reserve the same to the United States by filing in the Bureau of Land Management and in the appropriate land office copies of an instrument giving a description of the right-of-way and notice that the same is reserved to the United States for Federal irrigation purposes under this section, in which event entry for such land and the patent issued therefor shall be subject to the right-of-way so described in such instrument; and reference to each such instrument shall be made in the appropriate tract books and also in the patent (43 Stat. 704; 43 U. S. C. 417).

SUBPART L—RIGHTS-OF-WAY FOR TRANSMISSION LINES IN CONNECTION WITH BOULDER CANYON PROJECT UNDER THE BOULDER CANYON PROJECT ACT

§ 244.69 *Statutory authority.* Section 5 (d) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057; 43 U. S. C. 617d), authorizes the use by any agency receiving a contract for the purchase of electrical energy from Boulder Canyon Project of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy (45 Stat. 1057; 43 U. S. C. 617d).

Regulations superseded. Sections 244.1 to 244.69, inclusive, supersede §§ 244.1 to 244.53, inclusive, §§ 245.1 to 245.28, inclusive, and §§ 292.27 to 292.38, inclusive, of this chapter (Circ. 1237b, May 31, 1943; Circ. 1461a, December 14, 1942; Circ. 1619, August 16, 1946; Circ. 1682, May 25, 1948; Circ. 1701, October 14, 1948; and Circ. 1559, May 31, 1943).[33]

R. D. SEARLES,
Acting Secretary of the Interior.

JUNE 24, 1952.

APPENDIX

FORMS[1]

Forms 1 and 2 to be placed on maps. See section 244.6 (a) (7).

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[32] See appendix for forms.

[33] The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[1] Where necessary, these forms should be modified so as to be appropriate to the applicant (corporation, association, or individual), to the act invoked, and to the nature of the project.

Reference should be made to the appropriate section of the regulations to determine when each of the forms is required.

Forms Nos. 2, 4, 6, 7, 9, and 10 may be signed by any officer or employee of the company who is authorized to sign them. However, if they are executed by a person other than the President, they must be accompanied by a certified copy of the minutes of the Board of Directors meeting or other document authorizing such signature unless such certified copy has already been filed in the case.

Engineer's Statement

(Form 1)

------------------------ states he is by
(Name of engineer)
occupation a ------------------------ em-
(Type of engineer)
ployed by the ------------------------ to
(Company)
make the survey of the--------------------,
(Kind of works)
as described and shown on this map; that the survey of said works was made by him (or under his supervision) and under authority, commencing on the ------ day of ------------ 19----, and ending on the ------ day of ---------------- 19----; and that such survey is accurately represented upon this map.

------------------------ (Engineer)

Applicant's Certificate

(Form 2)

This is to certify that ------------------
(Engineer)
who subscribed the statement hereon is the person employed by the undersigned applicant to prepare this map, which has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map is filed as a part of the complete application, and in order that the applicant may obtain the benefits of ------------; and I further certify that the
(Cite statute)
right-of-way herein described is desired for ----------------.
(State purpose)

[SEAL] ------------------------
(Signature of applicant)
------------------------ (Title)
------------------------ (Company)

Attest: ------------------------

Forms for Plant Sites Only

See sections 244.42 (a) and 244.66.

(Form 3)

------------------------------ states that
(Name of engineer)
he is the chief engineer of (or the person employed by) the ------------------------,
(Company)
under whose supervision the survey was made of the grounds selected by the company for structures for a plant site under the act of Congress approved February 15, 1901 (February 1, 1905, act of March 4, 1911, as amended, or act of February 25, 1920, as amended), said grounds (here describe as required by regulation, sec. 244.31); that the accompanying drawing correctly represents the locations of the said structures; and that in his belief the structures represented are actually and to their entire extent required for the necessary uses contemplated by the said Act.

------------------------ (Signature of engineer)

(Form 4)

I, --------------------, do hereby certify
(Applicant) (Company officer)
that I am the ------------ of the --------
(Title)
------------; that the survey of the struc-
(Company)
tures represented on the accompanying drawing was made under authority and by direction of the company, and under the supervision of ----------------, its chief engineer (or person employed in the premises), whose statement precedes this certificate; that the survey as represented on the accompanying drawing actually represents the structures required (here described as required by regulation, sec. 244.30), for plant site under the act of Congress approved February 15, 1901 (February 1, 1905, March 4, 1911, as amended, or February 25, 1920, as amended); and that the company, by resolution of its board of directors, passed on the ------ day of ------------ 19----, directed the proper officers to present the said drawing for approval in order that the company may obtain the use of the grounds required for said structures, under the provisions of said act.

[SEAL] ------------------------
(Signature of applicant)
------------------------ (Title)
------------------------ (Company)

Attest: ------------------------------

Forms for Proof of Construction

See section 244.15.

(Form 5)

---------------------- states that he is
(Name of engineer)
the chief engineer (or was employed to supervise or check the construction of the canals, ditches, laterals, and reservoirs) for the --------------------; that said (canals,
(Company)
ditches, laterals, and reservoirs) have been constructed under his supervision; that construction was commenced on the ------ day of ------------ 19----, and completed on the ------ day of ------------ 19----; that the constructed (canals, ditches, laterals, and reservoirs) as aforesaid, conform to the map which received the approval of the Department of the Interior on the ------ day of ------------ 19----.

------------------------ (Signature of engineer)

(Form 6)

I, ------------------------------ certify
(Applicant) (Company officer)
that I am the ------- of the -------------;
(Title) (Company)
that the (canals, ditches, laterals and reservoirs) were actually constructed as set forth in the accompanying statement of --------, chief engineer (or the person employed by the company in the premises), and on the exact location represented on the map approved by the Department of the Interior on the ------ day of ------------ 19----; and that the company has in all things complied with the requirements of the act of (March 3, 1891) granting rights-of-way for (canals, ditches, laterals, and reservoirs) through public lands of the United States.

[SEAL] ------------------------
(Signature of applicant)
------------------------ (Title)
------------------------ (Company)

Attest: ------------------------

Forms for Reservoir Declaratory Statement

(Form 7)

See section 244.30.

Res. D. S.
No. ------------

Land Office at ----------------,
---------------- 19----.

I, ------------------------------------,
(Applicant) (Company officer)
of ------------------------------------,
(Post office address)
do hereby certify that I am ------------
(Title)
of the ----------------, and on behalf of
(Company)
said company, and under its authority, do hereby apply for the reservation of land in ------------ county, State of ------------, for the construction and use of a reservoir for furnishing water for livestock under the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952). The location of said reservoir and of the land necessary for its use, is as follows: --------------------[1] of section ------ in township ------------ of range ------ M., containing ------------ acres.

To the best of my knowledge and belief the said land is not occupied or otherwise claimed, and is not mineral or otherwise reserved. The said reservoir is to be used in connection with--------------------------.[2]
(Business of applicant)

The land owned or claimed by the applicant within the vicinity (within 3 miles) of the said reservoir is as follows: --
----
(Describe by legal subdivision, section, township, and range)

No part of the land to be reserved under this application is or will be fenced unless written permission is first obtained from the Department of the Interior; the same will be kept open to the free use of any person desiring to water animals of any kind; the land will not be used for any purpose except the watering of stock; and the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

The water of said reservoir will cover an area of ------ acres in ------ of section ------ in township ------------, of range ------ of said lands; the capacity of the reservoir will be ------ gallons, and the dam will be ------ feet high. The source of the water for said reservoir is ----------------
(Type and location
--------------------------, and there are
of spring, stream, runoff, etc.)
no streams or springs within 2 miles of the land to be reserved except as follows: --
(Insert names or other identification)

The applicant has filed no other declaratory statements under this act, except as follows:

No. ------, ------------ land office, area to be reserved ------ acres.

No. ------, ------------ land office, area to be reserved ------ acres.

No. ------, ------------ land office, area to be reserved ------ acres.

No. ------, ------------ land office, area to be reserved ------ acres.

Total, ------ acres, of which Nos. ------ ------ are located in said county.

It is the bona fide purpose and intention of this applicant to construct and complete said reservoir and maintain the same in accordance with the provisions of said Act of Congress and such regulations as are or may be prescribed thereunder.

[SEAL] ------------------------
(Signature of applicant)
------------------------ (Title)
------------------------ (Company)

Attest: ------------------------

---

[1] Description should be in terms of smallest legal subdivision (40-acre tract or lot).

[2] Statement of business should include full information concerning the extent to which applicant is engaged in grazing, breeding, driving, or transporting livestock; the number and kinds of such stock; the place where they are being bred or grazed; whether within an enclosure or upon unenclosed lands; and the points from which and to which they are being driven or transported.

Land Office at ________________

I, ____________________, manager of the land office, do hereby certify that the foregoing application is for the reservation of lands subject thereto under the provisions of Act of January 13, 1897; that there is no prior valid adverse right to the same; and that the land is not, by reason of its proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Department of the Interior.

Fees, $____________ paid.

____
(Manager)

(Form 8)

See section 244.33.

__________________ says that he is the
(Chief engineer)
person who was employed to make the survey of a reservoir covering an area of ______ acres, the initial point of the survey being ______________________________________, said
(Describe as required by § 244.33)
reservoir having been constructed upon the ____________[1] of section ______, township ____________, range ______ M., as proposed by reservoir declaratory statement No. ______, which was filed in the local land office at ____________, under the provisions of the
(City)
act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952); that the said survey was made on the ______ day of ____________ 19____; that the dam and all necessary works have been constructed in a substantial manner; that the reservoir has a capacity of ______ gallons of water.

____
(Signature of engineer)

(Form 9)

See section 244.33.

I, __________________________________, do
(Applicant) (Company officer)
hereby certify that I am the ____________
(Title)
of the ____________________ which filed (or
(Company)
that I am the person who filed) reservoir declaratory statement No. ______ in the local land office at ____________; that the proposed reservoir has been constructed upon the ____________[1] of section ______, township ________, range ______ M., covering an area of ________________ acres; that the dam and all necessary works have been constructed in a substantial manner in good faith in order that the reservoir may be used and maintained for the purpose, and in the manner prescribed by the said act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 752), the provisions of which have been and will be complied with in all respects.

[SEAL] ________________________
(Signature of applicant)

____
(Title)

____
(Company)

Attest:

____

(Form 10)

See section 244.35.

____________________________________ says
(Applicant) (Company officer)
that he is the ____________ of the ________
(Title)
____________ which filed (or that he is the
(Company)
person who filed) reservoir declaratory statement No. ______ in the local land office at ____________; that the reservoir con-
(City)
structed in pursuance thereof, as heretofore certified has been kept in repair; that water has been kept therein to the extent of not less than ______ gallons during the entire calendar year of 19____; that neither the reservoir nor any part of the land reserved for use in connection therewith is or has been fenced during said year; and that the said company (or person) has in all respects complied with the provisions of the act of January 13, 1897 (29 Stat. 484; 43 U. S. C. 952).

[SEAL] ________________________
(Signature of applicant)

____
(Title)

____
(Company)

Attest:

____

[F. R. Doc. 52-7149; Filed, June 30, 1952; 8:51 a. m.]

PART 245—RIGHTS-OF-WAY OVER AND UPON PUBLIC LANDS AND RESERVATIONS OF THE UNITED STATES FOR ELECTRICAL PLANTS AND TRANSMISSION LINES

PART 292—PUBLIC WATER RESERVES

CROSS REFERENCE: For supersedure of §§ 245.1 to 245.28 and §§ 292.27 to 292.38, see Part 244 of this chapter, *supra.*

Published in 17 F.R. 5896 of July 1, 1952

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S. O. Billings

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See Circ. 1764. too.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter T—Sale, Lease, or Use, and Acquisitions

[Circular 1826]

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

OFFERS TO LEASE PUBLIC LAND IN ALASKA IN TERMINATED LEASE

A new § 257.19a is added as follows:

§ 257.19a *Offers to lease public land in Alaska in terminated lease.* (a) When a small tract lease of public land in Alaska has terminated because of the expiration of the term for which it was issued, or where such a lease is canceled on relinquishment or for any other reason, the land during the remainder of the calendar month in which the lease expires and during the calendar month following such expiration, or during the remainder of the calendar month in which the notation of such cancellation is made on the land office tract books and during the calendar month following such notation, will not be subject to further application under the small tract laws except as follows:

(1) During the period from the 5th to the 15th, inclusive, of the month following the expiration of the lease, or the notation of the cancellation of the lease on the land office tract books, any qualified person may file in the proper office a "Lease Termination Drawing Card", Form 4-1215, describing the tract desired.

(2) If more than one card is received during the period mentioned in subparagraph (1) of this paragraph, all cards will be included in a drawing to be held at a subsequent date in the same month, the date to be fixed by the manager or other authorized officer. The drawing will determine priority and establish an adequate list of eligibles and of alternates entitled to file a lease offer for the land. If one card only is received, the land will be allocated to that applicant. An applicant may not file more than one card for each tract made available pursuant to this section. If pursuant to any such card any tract is allocated to an applicant, no additional allocation to him under any other such card will be made. A lease offer must be filed by a successful applicant within such time as may be allowed for that purpose by the manager or other authorized officer.

(b) On and after the first business day of the month following the drawing provided for in paragraph (a) of this section, the land, if not then included in a small tract lease, may be applied for under the small tract law by any qualified person as provided in § 257.7, subject, however, to the prior right to lease the land under that law acquired by any applicant by the filing of a Lease Termination Drawing Card, and also subject to the right of the prior lessee to remove his improvements, if any, as provided in § 257.19.

(c) Except in Alaska, small tract lease offers for lands in terminated small tract leases will be processed in the order in which they are filed after the lands become subject to appropriation. If conflicting lease offers are filed simultaneously, the rights of the applicants will be determined by a drawing, pursuant to 43 CFR 295.8.

(52 Stat. 609, as amended; 43 U. S. C. 682a)

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

R. D. SEARLES,
Acting Secretary of the Interior.

JULY 1, 1952.

[F. R. Doc. 52-7392; Filed, July 7, 1952; 8:48 a. m.]

Published in 17 F.R. 6099 of July 8, 1952

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~~Obsolete~~

~~Replaced by~~

~~No. 1840~~

Replaced by 1890

Replaced by 2040

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1827]

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

PART 192—OIL AND GAS LEASES

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

MISCELLANEOUS AMENDMENTS

The introductory paragraph of Circular No. 1821, as published in 17 F. R. 5566 of June 20, 1952, is hereby amended to read as follows:

The following amendments of certain sections of Part 200 are necessary to show in that part a change from the practice of issuing a noncompetitive lease for acquired lands on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease offer form for acquired lands becomes a lease when signed on behalf of the United States. The change will make the handling of noncompetitive leases for acquired lands substantially similar to that for public domain lands and will eliminate some of the steps now necessary in issuing such leases. In addition, certain minor changes are being made in Parts 191 and 192. The amendments of Parts 191 and 192 will become effective July 16, 1952. The amendments to Part 200 will not become effective until after a hearing has been held upon objections which have been offered to the regulations. The amendments are as follows:

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 8, 1952.

[F. R. Doc. 52-7578; Filed, July 10, 1952; 8:46 a. m.]

Published in 17 F.R. 6216 of July 11, 1952

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23805

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1828]

Subchapter A—Alaska

PART 78—SURVEYS

Subchapter L—Mineral Lands

PART 185—GENERAL MINING REGULATIONS

Office copy

For Part 78 - See Circ. 1711, too
" " 185 " Circ. 1785, too.
1278 + 1870

Replaced by 1941

Parts 78 and 185 are amended, as indicated below. The revised §§ 78.8 and 185.40 provide for additional copies of the plat and field notes which will be furnished to the patentee with his mineral patent. The revised § 185.51 requires the claimant to pay the cost of preparing the copies. The purpose of the new § 185.104 is to shorten land descriptions in patents hereafter issued for certain kinds of mining claims.

1. Section 78.8 is amended to read:

§ 78.8 *Plats and field notes of mineral surveys.* (a) The Office Cadastral Engineer, Public Survey Office, Juneau, Alaska, will make an estimate of the costs of the platting of the claim or claims and of the other office work, including the preparation of the copies of the plat and field notes to be furnished the claimant. The claimant will deposit the estimated amount with that office to be passed to the fund created by "deposits by individuals for surveying public lands".

(b) Upon approval of plats of Alaskan mineral surveys by the Office Cadastral Engineer, four copies thereof will be prepared in the public survey office by photostat, blueprint, or such other process as may be available. The original plat and field notes will be retained in the public survey office; one copy of the plat will be given the claimant for posting upon the claim and two copies of the plat and of the field notes will be given the claimant for filing with the proper manager, to be finally transmitted by that officer, with the other papers in the case, to the Office of the Director, Bureau of Land Management, Washington 25, D. C. One copy of the plat will be sent by the Office Cadastral Engineer to the manager of the proper land district to be retained in his files for future reference. When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

(R. S. 2478; 43 U. S. C. 1201)

2. Section 185.40 is amended to read:

§ 185.40 *Plats and field notes of mineral surveys.* As to plats of survey of mining claims outside of the Territory of Alaska, the regional cadastral engineer will have four copies made, which copies with the original plat, will be filed and disposed of as follows: The original plat and field notes to be retained in the public survey office; one copy of the plat to be given the claimant for posting upon the claim; two copies of the plat and two copies of the field notes to be given the claimant for filing with the proper manager, to be finally transmitted by that officer, with the other papers in the case, to the Office of the Director, Bureau of Land Management, Washington 25, D. C.; and one copy to be sent by the regional cadastral engineer to the manager of the proper land district, to be retained in his files for future reference. When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

(R. S. 2478; 43 U. S. C. 1201)

3. Section 185.51 is amended to read:

§ 185.51 *Payment of charges of the public survey office.* With regard to the platting of the claim and other office work in the public survey office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

(R. S. 2478; 43 U. S. C. 1201)

4. The following new text is added:

PATENTS FOR MINING CLAIMS

§ 185.104 *Land descriptions in patents.* The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 18, 1952.

[F. R. Doc. 52-8142; Filed, July 24, 1952; 8:46 a. m.]

Published in 17 F.R. 6823 of July 25, 1952

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1829]

PART 192—OIL AND GAS LEASES

OFFER TO LEASE AND ISSUANCE OF LEASE

Section 192.42 is amended by adding at the end thereof a new paragraph, as follows:

§ 192.42 *Offer to lease and issuance of lease.* * * *

(m) No lease shall be issued before final action has been taken on (1) any prior offer to lease the land, (2) any subsequent offer to lease the land that is based upon an alleged preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offerer or petitioner is found to be qualified and entitled to receive a lease on the land.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

R. D. SEARLES,
Acting Secretary of the Interior.

JULY 31, 1952.

[F. R. Doc. 52-8620; Filed, Aug. 6, 1952; 8:46 a. m.]

Published in 17 F.R. 7186 of August 7, 1952

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[illegible]

[illegible] by [illegible]

CIRCULAR 1829

Part 192 - Oil & Gas

Obsolete - See Circular 1840

" Replaced by 1927 (11/58)

[illegible]

Published in 17 F.R. 7368 of August 13, 1952

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See Circ. 1809 too

Replaced by 1988 (11/58)

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1830]

PART 295—WITHDRAWALS AND RESTORATIONS

The following center heading and sections are added at the end of Part 295:

WITHDRAWAL OR RESERVATION OF LANDS FOR THE USE OF FEDERAL OR STATE AGENCIES

Sec.
295.9 Application by Federal or State agency.
295.10 Segregative effect of application by Federal or State agency.
295 11 Action on application by Federal or State agency.

AUTHORITY: §§ 295.9 to 295.11 issued under R. S. 161, 2478; 5 U. S. C. 22, 43 U. S. C. 1201. Interpret or apply E. O. 10355, May 26, 1952, 17 F. R. 4831.

§ 295.9 *Application by Federal or State agency.* (a) Except where the matter is classified for national security reasons, the head of any Federal or State agency (or an officer designated by him) desiring lands owned or controlled by the United States to be withdrawn or reserved under the authority of Executive Order 10355 (May 26, 1952, 17 F. R. 4831) for the use of the agency shall file an application for such withdrawal or reservation with the manager of the land office for the area in which the lands are situated, or, if there is no land office for the area, with the Director of the Bureau of Land Management, Department of the Interior, Washington 25, D. C.

(b) A classified application for the withdrawal or reservation of lands pursuant to Executive Order 10355 shall be submitted to the Secretary of the Interior, Washington 25, D. C.

(c) An application for the withdrawal or reservation of lands pursuant to Executive Order 10355 for the use of a Federal or State agency shall contain the following information:

(1) Name of the agency for which the withdrawal or reservation is desired.

(2) Description and acreage of the lands desired, describing the lands in terms of the public land surveys or, if unsurveyed, by metes and bounds, with the approximate area. A metes and bounds description should be connected by course and distance with some corner of the public land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, or other prominent topographical points or natural objects or monuments.

(3) Purpose of the requested withdrawal or reservation (if the purpose is classified for security reasons, so state).

(4) A statement showing the agency's need for all the land requested.

(5) A statement indicating whether the withdrawal or reservation should preclude the following activities on the affected lands: (i) Grazing, (ii) mineral leases, and (iii) mining locations.

(6) Citation of statutory authority under which the withdrawal or reservation may be made.

§ 295.10 *Segregative effect of application by Federal or State agency.* (a) The recording in the serial register and the noting on the official plats and in the tract books maintained by the land office for the area, or by the Bureau of Land Management if there is no land office for the area, of information indicating that an application for the withdrawal or reservation of lands has been received from a Federal or State agency shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

(b) An application may be amended at any time by the applicant agency so as to eliminate therefrom lands no longer desired for withdrawal or reservation. The noting upon the proper public records of information regarding such amendment shall relieve the lands so eliminated of the segregative effect of the agency's application; and any suspended applications from other persons for the eliminated lands may be processed without regard to the agency's application.

(c) An amendment of an agency's application so as to include additional lands shall have as to such lands the segregative effect provided for in paragraph (a) of this section from the date of the entry of information regarding the receipt of such request on the records mentioned in paragraph (a) of this section. Such an amendment will be given the serial number of the original application, and it will be processed either as a part of that application or separately, as the facts may warrant.

§ 295.11 *Action on application by Federal or State agency.* (a) The Secretary of the Interior (or his delegate) may, in his discretion and if the public interest seems to require it, afford members of the public an opportunity to object to an application by a Federal or State agency for the withdrawal or reservation of lands. Notice of such opportunity (Form 4-1193) shall be published in the FEDERAL REGISTER and shall fix the time and place for the filing of written objections or for an oral hearing, as may be determined by the Secretary (or his delegate).

(b) If the Secretary of the Interior (or his delegate) denies an agency's application in whole or in part, a Notice of Determination on Form 4-1194[1] will be issued. Upon publication of the Notice of Determination in the FEDERAL REGISTER, the affected lands will no longer be subject to the segregative effect of the agency's application; and any suspended applications from other persons for such lands may be processed as the facts warrant.

(c) If the Secretary (or his delegate) determines that the withdrawal or reservation requested by a Federal or State agency should be made, in whole or in part, he will issue a public land order to that effect, for publication in the FEDERAL REGISTER. Appropriate action will thereupon be taken on all suspended applications from other persons for the affected lands.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

AUGUST 7, 1952.

[F. R. Doc. 52-8900; Filed, Aug. 12, 1952; 8:45 a. m.]

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[1] Filed as part of the original document.

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See Circ. 1814, too.
Replaced by 1973

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1831]

PART 146 — EXCHANGES OF PRIVATELY OWNED LANDS UNDER TAYLOR GRAZING ACT

DETERMINATION OF VALUES; PUBLICATION OF NOTICE OF EXCHANGE

In order to make clear the fact that a decision directing publication of notice of a private exchange is not a final determination of any material fact, § 146.3 (b) is amended to read as follows:

§ 146.3 *Determination of values; publication of notice of exchange.* * * *

(b) The authorized officer, if he has no basis to determine that the value of the selected land exceeds the value of the offered lands, that the exchange is not in the public interest, or that there is other reason not to do so, shall direct publication of the notice of exchange in the newspaper or newspapers designated by him, and require the applicant to submit proof of publication and comply with the provisions of §§ 146.4, 146.5 and 146.7. However, until patent to the selected land is issued, the authorized officer may at any time determine that the exchange should not be completed, and the applicant has no contractual or other rights against the United States, and no action taken will create any contractual or other obligation of the United States other than an obligation to pay one-half the cost of publication.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

JOEL D. WOLFSOHN,
Acting Secretary of the Interior.

AUGUST 13, 1952.

[F. R. Doc. 52-9090; Filed, Aug. 18, 1952; 8:46 a. m.]

Published in 17 F.R. 7547 of August 19, 1952

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See Circ. 1859

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1832]

PART 70—MINERAL LANDS: COAL PERMITS AND LEASES AND LICENSES FOR FREE USE OF COAL

This part is hereby completely revised as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

GENERAL

Sec.

70.1 Statutory authority.
70.2 Area and limitation on holdings.
70.3 Qualifications of applicants.
70.4 Permits and leases for lands disposed of with reservation of coal.
70.5 Requirements when lands are within a withdrawal.
70.6 Payments.

COAL LEASES

70.7 Leasing units.
70.8 Form of lease.
70.9 Minimum expenditure and lease bond.
70.10 Minimum production; suspension of operations.
70.11 Application for lease by competitive bidding.
70.12 Offer of lands or deposits for lease by competitive bidding.
70.13 Notice of lease offer.
70.14 Sale; bidding requirements; action by successful bidder.
70.15 Modification and leasing of additional land or coal deposits; consolidation of leases of small areas.
70.16 Renewal of lease; readjustment of terms and conditions.
70.17 Relinquishment of lease.
70.18 Cancellation of lease.
70.19 Use of timber.

COAL PROSPECTING PERMITS

70.20 Character of lands.
70.21 Rights conferred.
70.22 Application for permit.
70.23 Permit bond.
70.24 Reward for discovery.

TRANSFERS OF PERMITS AND LEASES: OVERRIDING ROYALTIES

70.25 Transfers, including sub-leases.
70.26 Limitation on overriding royalties.

LIMITED COAL LICENSES

70.27 Purpose of license.
70.28 Area and duration.
70.29 Application for license.

70.30 & 70.31 - added by Circ. 1859

AUTHORITY: §§ 70.1 to 70.31, issued under sec. 17, 38 Stat. 745; 48 U. S. C. 451.

GENERAL

§ 70.1 *Statutory authority.* Sections 1 to 19, inclusive, of the act of October 20, 1914 (38 Stat. 741, et seq.; 48 U. S. C., sections 432–438, 438a, 439–452), as amended, authorize the Secretary of the Interior to:

(a) Divide into leasing units and award leases of the coal, lignite and associated minerals in unreserved coal lands and coal deposits owned by the United States in Alaska;

(b) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits in Alaska; and

(c) Issue limited licenses or permits to prospect for, mine and dispose of, for free use, coal on specified tracts belonging to the United States in Alaska.

§ 70.2 *Area and limitation on holdings.* A single lease or permit may embrace not exceeding 2,560 acres except where the rule of approximation applies. A permit will comprise contiguous tracts, or tracts in reasonably compact form, if good reasons appear for not including a contiguous area. A lease will comprise contiguous tracts, except in a case where it appears that non-contiguous tracts can be practically worked as a single mine or unit. No person, association, or corporation, except as in the act provided, may hold more than 2,560 acres in the aggregate, whether directly through the ownership of coal leases and permits or interests in such leases or permits, or indirectly as a member of an association or associations, or as a stockholder of a corporation, holding such leases and permits or interests therein or both.

§ 70.3 *Qualifications of applicants.* (a) Leases, prospecting permits and limited licenses may be issued to citizens of the United States over the age of 21 years, associations of such citizens, corporations organized under the laws of the United States or any State or Territory thereof, including a company or corporation operating a railroad or common carrier, and municipalities. A majority of the stock of such corporation shall at all times be owned and held by citizens of the United States.

(b) Every applicant for coal permit or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate 2,560 acres, not including areas held under a limited license which, under the act (48 U. S. C., sec. 445), is no bar to acquiring or holding a lease.

(c) Where the applicant is or operates a railroad or common carrier, it must make a statement that it operates main or branch lines in the Territory of Alaska; that the coal or coal lands applied for through leases, applications therefor, and permits, do not exceed such area or quantity as may be required and used solely for its own use; and that the aggregate acreage, other than as set out in § 70.28, in leases and applications therefor and permits in which it is interested directly or indirectly does not exceed 2,560 acres.

(d) Every applicant for lease or permit must also furnish a showing as to the need for additional coal production which cannot otherwise be reasonably met, or, if such a showing of need cannot be made, a statement of the reasons why a lease or permit is desired.

§ 70.4 *Permits and leases for lands disposed of with reservation of coal.* Where lands included in a lease or permit have been disposed of with reservation of the coal deposits, a lessee or permittee must make full compliance with the law under which such reservation was made. See the act of March 8, 1922 (42 Stat. 416; 48 U. S. C., sec. 377); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U. S. C., Supp. III, 54), and other laws authorizing such reservations.

§ 70.5 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for coal lease or permit is within a withdrawal which does not preclude disposition of the coal deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a coal lease or permit. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease or permit.

§ 70.6 *Payments.* Unless otherwise directed by the Secretary, rentals, royalties and other payments under leases, permits and licenses issued under the act shall be paid to the manager of the land office for the land district in which the lands are situated. All remittances shall be made payable to the Treasurer of the United States.

COAL LEASE[1]

§ 70.7 *Leasing units.* (a) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(b) All material facts, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

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[1] On request addressed to the Director of the Bureau of Land Management at Washington, D. C., a blank lease (Form 4–031a) will be furnished the applicant; also, those who desire may procure from the Superintendent of Documents, Government Printing Office, Washingto, D. C., a folio containing photolithographic copies of the approved plats of the topographic and subdivisional township surveys of the Matanuska field (13 townships) for $1 and of the Bering River field (8 townships) for 75 cents.

(c) Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

§ 70.8 *Form of lease.* Leases shall be issued on Form 4–031a.[2]

§ 70.9 *Minimum expenditure and lease bond.* (a) An actual bona fide expenditure for mine operation, development, or improvement purposes on or for the benefit of the leased land, of the amount that may be determined will be a condition in each lease as the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years.

(b) Prior to the issuance of a lease, the lessee shall furnish a bond executed by the lessee with approved corporate surety on Form 4–1113 or the lessee's personal bond on Form 4–1114, in such sum as may be required but in no event less than $1,000, and conditioned upon compliance with all of the terms and provisions of the lease. Personal bonds must be accompanied by a deposit of securities such as specified in § 70.23. If, the amount of the bond is fixed at $1,000, the lessees may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties to cover compliance with all terms and provisions of the lease or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution double the sum specified in the undertaking, over and above his just debts and liabilities, and that he is either a resident of the same State or Territory and the United States Judicial District as the principal on the bond, or of the Territory and the Judicial District in which the lands involved are located. There must also be furnished a certificate by a judge or clerk of record, a United States Attorney, a United States Commissioner, or United States postmaster, as to the indemnity, signature and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on Form 4–215.

§ 70.10 *Minimum production; suspension of operations.* (a) Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, unless, on application and showing made, the Secretary of the Interior in the interest of conservation, or for other satisfactory cause, shall direct, or shall assent to the suspension of operations or production of coal as provided in section 19 of the act (48 U. S. C. 438a). The law provides that where suspensions are made the payment of rentals will be waived for the period of suspension and the lease term extended for a like period.

(b) If operations or production are suspended pursuant to section 19 of the act (48 U. S. C. sec. 438a), no payment of acreage rental prescribed in the lease is required during such period of suspension. Any such suspension if granted shall be effective beginning with the first day of the lease month following the date of filing of written application for such suspension in duplicate in the office of the regional mining supervisor, and ending with the first day of the lease month in which relief is terminated in writing by the Secretary of the Interior or the regional mining supervisor. Where rentals have been paid in advance, proper credit will be allowed on the next rental or royalty payment due under the lease. Complete information must be furnished showing the necessity for suspension of operation and production in the interest of conservation or other satisfactory cause for the suspension requested.

(c) The term of a lease shall be extended by adding thereto any period of suspension of operations or production assented to or directed by the Secretary of the Interior.

(d) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which suspension of operations or production is directed or granted by the Secretary of the Interior in the interest of conservation or for other satisfactory cause.

§ 70.11 *Application for lease by competitive bidding.* (a) An application for a lease by competitive bidding must be filed in duplicate in the proper land office. No specific form is required, but the application should cover the following points:

(1) The applicant's name and address.

(2) A statement as to citizenship: In the case of an individual, whether native born or naturalized, and if naturalized, date of naturalization, court in which naturalized, and the number of certificate if known, and if a woman, whether married or single, and if married, the facts as to the citizenship of her husband and the date of her marriage if both are not native born citizens. Associations are required to file a certified copy of their articles of association and the same showing as to citizenship and holdings of their members as required of an individual and specified in this subparagraph. If the applicant is a corporation, it must file (i) a certified copy of the articles of incorporation or appropriate reference by land office serial number of the record of the Bureau in which such a copy has been filed, with statement as to any subsequent amendments, (ii) a separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 percent of the stock of the corporation, and (iii) a statement of the proportion of its stock owned or held by aliens. If a majority of the stock of a corporation is held by aliens, the application will be denied. A municipality must submit evidence of: (i) The law, charter and procedure taken by which it became and exists as a legal body corporate; (ii) that the taking of a permit or lease is authorized under such law or charter; and (iii) that the action proposed has been duly authorized by the governing body of such municipality.

(3) A statement that the interests, direct or indirect, in coal leases, permits or applications therefor in Alaska, do not exceed in the aggregate 2,560 acres, except as indicated in § 70.3 (b). Where the applicant is or operates a railroad or common carrier, it must state that the coal or coal lands applied for through leases, applications therefor, and permits, do not exceed such area or quantity as may be required and used solely for its own use.

(4) Description of the land for which the lease is desired, by legal subdivision if surveyed, and by metes and bounds if unsurveyed. In order to properly identify unsurveyed lands, if practicable, the metes and bounds description should be connected by course and distance with some corner of the public-land surveys and their position with reference to rivers, creeks, mountains or mountain peaks, towns, islands, or other prominent topographical points or natural objects or monuments should be given.

(5) The showing specified in § 70.3 (d).

(6) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(7) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(b) The application must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement[3] as to citizenship and acreage holdings. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 70.12 *Offer of lands or deposits for lease by competitive bidding.* If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided by the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

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[2] Filed as part of the original document.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

§ 70.13 *Notice of lease offer.* Notice under the preceding section of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation, published in the Territory of Alaska. The notice will be published at the expense of the Government. Such notice will show the day, hour, and place of sale, whether the sale will be at public auction or by sealed bids, the method of submitting sealed bids, the rental and rate of royalty to be charged, the minimum investment and the minimum production requirement, and the description of the land. If the sale is by public auction the notice will also specify that sealed bids will be accepted. The right is reserved by the Director, Bureau of Land Management, in the public interest, to reject any and all bids, and should a bid be rejected, the deposit made by the bidder will be returned. All bidders at any public sale of leases are warned against committing any act of intimidation, combination or unfair management to hinder or prevent bidding thereon, in violation of 18 U. S. C., 1860.

§ 70.14 *Sale; bidding requirements; action by successful bidder.* When the sale is by public auction, before bidding is commenced by those persons present, the manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of sale. The successful bidder must on the day of sale deposit with the manager of the land office or other officer conducting the sale and each sealed bid must be accompanied by the following: Certified check, money order, or cash, for one-fifth of the amount of bid and evidence of qualifications of the bidder as prescribed in § 70.11 (a) (2), (3) and (b), if a current showing in that regard has not been filed in connection with the application for lease of the lands or deposits. If the land is surveyed, the successful bidder will be allowed 30 days from receipt of lease forms within which (a) to file in the proper land office a lease, duly executed by him on form 4–031a and the bond required by § 70.9, and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements of paragraphs (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Alaska Coal Act.

§ 70.15 *Modification and leasing of additional land or coal deposits; consolidation of leases of small areas.* (a) Under section 4 of the act (48 U. S. C. Sec. 435), a lessee may obtain a further or new lease to include additional coal lands contiguous to those embraced in his original lease, but in no event shall the area embraced in the original and new lease exceed in the aggregate 2,560 acres, except where the rule of approximation applies. The lessee shall file his application for a new lease in duplicate in the proper land office describing the additional lands desired, the needs and reason for and the advantage to the lessee of such lease. Upon determination by the Director that the new lease is justified, the land or deposits may be offered as provided in § 70.13.

(b) Upon a satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within three years thereafter, an additional tract of land or coal deposit may be leased. An application should be filed in duplicate in the proper land office and should contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested, and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit, they will be offered for leasing as provided in § 70.13. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease which must not exceed 2,560 acres; otherwise, a separate lease may be issued.

(c) Under section 5 of the act (48 U. S. C., sec. 436), lessees holding under leases small blocks or areas may consolidate their leases or holdings so as to include in a single holding not to exceed 2,560 acres of contiguous lands. The lessees should file their joint application for a new lease in duplicate in the proper land office describing the lands held in their respective leases and giving the serial numbers of such leases, and stating the reasons why they desire a consolidated lease. If the showing is deemed satisfactory to the Director, a consolidated lease will be issued.

(d) Before a new lease under paragraph (a) of this section, or a lease modified under paragraph (b) of this section, or a consolidated lease under paragraph (c) of this section is issued, the lessee or lessees shall file the consent of the surety or sureties and the acceptance by the lessee or lessees of the terms and conditions proposed.

§ 70.16 *Renewal of lease; readjustment of terms and conditions.* A lease is subject to renewal and its terms and conditions are subject to readjustment at the end of each fifty-year period (or such extended period as results from the grant of a suspension of operations or production) succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. In addition, the lessor may readjust and fix royalties payable under the lease at the end of each 20-year period of the lease. The lessee will be notified by the lessor of the proposed readjustments or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of notice, he will be deemed to have agreed to such terms and, at the end of each 50-year period, to renewal of his lease. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty- or fifty-year period as the case may be.

§ 70.17 *Relinquishment of lease.* Upon payment of all rentals, royalties, and other debts due and payable to the lessor, upon payment of all wages or money due and payable to the workmen employed by the lessee, and upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease. The lessee may also surrender any legal subdivision of the are included within the lease, but in no case shall such lease be so terminated in whole or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby in accordance with the regulations and terms of the lease. A surrender must be made by a relinquishment filed in duplicate in the proper land office. A relinquishment upon its acceptance shall take effect as of the date it is filed.

§ 70.18 *Cancellation of lease.* If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease or at the effective date of any readjustment of the terms and conditions thereof under § 70.16, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 14 of the act (48 U. S. C. sec. 449). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

§ 70.19 *Use of timber. The use of* timber found upon the public lands in Alaska, by the permittee and the lessee, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes in addition to that taken from the area in the permit or lease, may be obtained under the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. sec. 423), as amended, or by arrangement with the Department of Agriculture, if the land is in a national forest.[4]

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[4] See Part 79 of this chapter, Timber.

COAL PROSPECTING PERMITS

§ 70.20 *Character of lands.* Permits shall be issued on Form 4–031b[5] for a period of four years to qualified applicants to prospect unclaimed and undeveloped lands where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 70.21 *Rights conferred.* A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary to determine the workability and commercial value of the coal deposits in the land.

§ 70.22 *Application for permit.* An application for a permit must be filed in duplicate in the manner and in the office specified in § 70.11 (a). Each application must be accompanied by a filing fee of $10.00 which will be retained as a service charge even though the application should be rejected or withdrawn either in whole or in part. No specific form of application is required, but in addition to the requirements of § 70.11 (a) (1), (2), (3), (4) and (5) and (b), it should cover the following points:

(a) Condition of coal occurrences, so far as determined; description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal.

(b) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(c) Brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

§ 70.23 *Permit bond.* The applicant must furnish a corporate surety bond on Form 4–1130 or his personal bond on Form 4–1131 conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of $1,000 and where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of March 8, 1922 (42 Stat. 416; 48 U. S. C., sec. 377), the bond must be conditioned upon the payment of any damages caused to the crops or improvements thereon by reason of prospecting for coal thereon under the permit. Personal bonds must be accompanied by a deposit of negotiable Federal securities equal at their par value to the amount of the bond. The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant, that the permit will be granted when the bond is filed. The permittee may, in place of a bond of the two types specified above, submit one on Form 4–1130 with two qualified sureties as provided in § 70.9 (b).

§ 70.24 *Reward for discovery.* A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in compact form. An application for preference right lease must be filed in duplicate in the office specified in § 70.11 (a) promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be 25 cents for each acre, or fraction thereof. The lease, if issued, will be in accordance with the provisions of §§ 70.8 to 70.10, inclusive, and will be dated the first day of the month following the date the application is filed unless the applicant requests that it be dated the first day of the month within which it is filed. If the permit expires and the application for lease is finally rejected, royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

TRANSFERS OF PERMITS AND LEASES; OVERRIDING ROYALTIES

§ 70.25 *Transfers, including subleases.* (a) Permits and leases may be transferred in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval at the office specified in § 70.11 (a) within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 70.11 (a), (2) and (3) and (b). If the instrument fails to describe the true consideration, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in duplicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval or if the transferee requests, the first day of the month of approval.

(b) The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

(c) An application for approval of any instrument or transfer of a lease or permit or interest therein or a filing of any such instrument must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdawn or rejected in whole or in part.

§ 70.26 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

LIMITED COAL LICENSES

§ 70.27 *Purpose of license.* Coal licenses may be issued, for the supply of strictly local and domestic needs for fuel, for a period of two years to any of the applicants having the qualifications specified in § 70.3 (a), without the payment of royalty for the coal mined or for the land occupied. All licensees may mine coal for sale, except a company or corporation operating a common carrier, which is restricted by section 3 of the act (48 U. S. C., sec. 434), to the requirement of only such an area or amount of coal as may be required and used solely for its own consumption. The holding of a lease is no bar to the acquisition of, holding or operating a limited coal license and the holding of a license is no bar to the acquisition or holding of a lease or interest therein. No such licenses, however, will be issued for coal lands in the Bering or Matanuska coal fields which have been surveyed into leasing blocks or tracts or in fields where mines are being operated under lease. A license grants the right to prospect for, mine, and remove coal free of charge from specified tracts of lands belonging to the United States in Alaska, and does not authorize the mining of any other form of mineral deposits, nor the cutting or removal of timber.

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[5] Filed as part of the original document.

§ 70.28 *Area and duration.* A license will be limited to specified tracts not to exceed 10 acres in any one coal field. The ground covered by a license must be square in form and should be limited to an area reasonably sufficient to supply the quantity of coal needed. The act limits the license period to 10 years, but a license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period, subject to such conditions necessary for the protection of the public interest as may be imposed prior to or at the time of the extension. Misrepresentation, carelessness, waste, injury to the property, the charge of unreasonable prices for coal, or material violations of the rules and regulations governing operation as shall have been prescribed in advance of the issuance of a license, will be deemed sufficient cause for revocation.

§ 70.29 *Application for license.* (a) Application for a license to mine coal for local and domestic needs must be filed on Form 4-694a, or its substantial equivalent in the office specified in § 70.11 (a) and be accompanied by a $10 filing fee. A municipality must file with the application a showing of (1) the law or charter and procedure taken by which it became and exists as a legal body corporate, (2) that the taking of a license is authorized under such law or charter and (3) that the proposed action has been duly authorized by the governing body of the municipality.

(b) Prior to the execution of the application, the applicant must have gone upon the land, plainly marked the boundaries thereof by substantial monuments, and posted a notice setting forth his intention of mining coal therefrom. The application must contain the statement that these requirements have been complied with and the description of the land as given in the application must correspond with the description as marked on the ground. The license, if granted, should be recorded with the local mining district recorder, if the land is situated within an organized mining district.

(c) Applicants are allowed, due to the long distances and limited means of transportation, the privilege of mining coal as soon as their applications have been forwarded to the office specified in § 70.11 (a). If the application should be rejected, upon receipt of notice of such rejection, all privileges under this section terminate and the applicant must cease mining the coal.

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

JOEL D. WOLFSOHN,
Assistant Secretary of the Interior.

SEPTEMBER 15, 1952.

[F. R. Doc. 52-10202; Filed, Sept. 18, 1952; 8:47 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter K—Military and Naval Service

[Circular 1833]

PART 181—SOLDIERS' AND SAILORS' HOMESTEAD RIGHTS

Replaced by No. 1850

ONLY AS TO: 181.36

Replaced by Circular 1981 (11/58)

PUBLIC LAND RIGHTS OF VETERANS OF WORLD WAR II AND OTHER PERSONS ENTITLED TO CREDIT FOR SERVICE OF SUCH VETERANS

1. The footnote to § 181.36 is amended to read:

[6] World War II ended with the Treaty of Peace with Japan which became effective April 28, 1952 (Proclamation No. 2974 of April 28, 1952, 17 F. R. 3813). By a series of extensions embodied in Public Laws 313, 368, 393 and 428, 82d Congress, the terminal date for computing credits for service during the war was extended to and including July 3, 1952.

(Sec. 6, 45 Stat. 1061, sec. 5, 58 Stat. 748; 43 U. S. C. 617e, 283)

2. A footnote to § 181.20 is added, as follows:

§ 181.20 *Statutory authority; duration of act.*[a] * * *

[a] By section 14 of the act of June 24, 1948 (62 Stat. 623), as amended (50 U. S. C. App. Sup. 464) all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 were continued in effect until "repealed or otherwise terminated by subsequent act of the Congress."

(Sec. 507, 54 Stat. 1188; 50 U. S. C. App. 567)

JOEL D. WOLFSOHN,
Assistant Secretary of the Interior.

OCTOBER 13, 1952.

[F. R. Doc. 52-11254; Filed, Oct. 16, 1952; 8:45 a. m.]

Published in 17 F.R. 9183 of October 17, 1952

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Ammendment to: Circ. 1825

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1834] See Circ. 1822, 1842, 1844, 1847, 1864 & 1866

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

SUBPART D—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR TELEPHONE AND TELEGRAPH LINES, TRANSMISSION LINES, RADIO AND TELEVISION SITES, AND FOR PIPELINES, CANALS, DITCHES, AND WATER PLANTS UNDER THE ACTS OF FEBRUARY 15, 1901, AND MARCH 4, 1911

See Circ 1876

Replaced by circular 1915 (11/58)

TERMS AND CONDITIONS

Subparagraph (2) of paragraph (d) of § 244.44 is amended to read as follows:

§ 244.44 *Terms and conditions.* * * *

(d) * * *

(2) In order to utilize any surplus capacity certified by the holder to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(R. S. 161, 2478; 5 U. S. C. 22, 43 U. S. C. 1201)

VERNON D. NORTHROP,
Acting Secretary of the Interior.

OCTOBER 27, 1952.

[F. R. Doc. 52-11671; Filed, Oct. 30, 1952; 8:45 a. m.]

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BILLINGS, MONTANA
DEC 29 1952
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter W—Timber and Stone Lands

[Circular 1835]

PART 284—TIMBER CUTTING, SALE OR USE

ADVERTISEMENT; POSTING OF NOTICE

Section 284.3 is amended to read as follows:

§ 284.3 *Advertisement; posting of notice.* After consideration of the report, the Regional Administrator or other authorized officer will, if he deems it advisable, offer the timber for sale under sealed bids by advertising as follows:

(a) In cases of small quantities of timber amounting in value to $1,000 or less, the sale shall be advertised for at least ten days by the posting of notices only.

(b) Where the timber to be sold exceeds $1,000 in value, the sale shall be advertised in a newspaper of general circulation in the county in which the timber to be sold is situated, once a week for four consecutive weeks next preceding the time set for the opening of the bids. And if the proposed sale be for 20,000,000 feet, board measure, or more, of timber available by location to a single logging operation, an advertisement of the proposed sale shall be inserted once in two lumber trade journals of general circulation. During the period of advertising, copies of the advertisement shall be posted where they will attract the notice of the general public.

(c) Where, in the judgment of the Regional Administrator, immediate sale of timber exceeding $1,000 in value is necessary in order to prevent loss to the Government due to expected rapid deterioration of the timber from insect or fungus attacks or from other causes, the sale may be effected, notwithstanding the provisions of paragraph (b) of this section, after the posting of public notices for not less than ten days and the publication of notice once during the ten-day posting period in a newspaper of general circulation in the county wherein the timber to be sold is situated.

(R. S. 2478, sec. 1, 37 Stat. 1015, as amended; 43 U. S. C. 1201, 16 U. S. C. 614)

VERNON D. NORTHROP,
Acting Secretary of the Interior.

NOVEMBER 26, 1952.

[F. R. Doc. 52-12813; Filed, Dec. 3, 1952; 8:45 a. m.]

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For Part 194-
See Circ 1592, 1600, 1643
+ 1857

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1836]

PART 194—POTASSIUM PERMITS AND LEASES

LIMITATION ON HOLDINGS

Section 194.26 is hereby amended to read as follows:

§ 194.26 *Limitation on holdings.* (a) No person, association, or corporation will be granted, either directly, or indirectly, or by approval of assignments, in any one State, permits for an area which when added to the area already held under permits issued under the 1927 act exceeds in the aggregate 51,200 acres, and, except as hereinafter provided, leases for an area which when added to the area already held under leases issued under the 1927 act exceeds in the aggregate 15,360 acres.

(b) Any person, association, or corporation holding acreage approximating 15,360 acres of Federal land in a single mining unit and refining development, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to and approval of the Secretary, be granted a lease for an additional acreage of not to exceed 2,560 acres if the Secretary shall determine that such increase will result in conservation of natural resources and will provide for the most economical and efficient recovery as a single unit of a mineable deposit without waste.

(c) The Secretary may, upon a finding that the granting of such leases would be in the public interest, grant to any such lessee, leases for additional acreage not to exceed 10,240 acres in all as a separate mining unit, and may include in such additional leases a provision requiring the construction of additional refining facilities.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 19, 1952.

[F. R. Doc. 52-13571; Filed, Dec. 24, 1952; 8:54 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1837]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

REGULATIONS GOVERNING THE SALE OF TIMBER ON THE O. & C. LANDS

Sections 115.36 to 115.53, inclusive, are repealed and the following is substituted therefor:

Sec.
115.36 Statutory authority.
115.37 Definitions.
115.38 Disposals which must be made under other statutes; rights under other statutes.
115.39 Sale and appraisal.
115.40 Qualifications of bidders.
115.41 Timber sale plan.
115.42 Publication and posting.
115.43 Oral auction sales.
115.44 Deposits with bids.
115.45 Action on bids.
115.46 Contracts.
115.47 Bonds.
115.48 Payment.
115.49 Reappraisals.
115.50 Permits to mining claim owners, Revested and Reconveyed lands.
115.51 Appeals.

AUTHORITY: §§ 115.36 to 115.51 issued under sec. 5, 50 Stat. 875.

§ 115.36 *Statutory authority.* The act of August 28, 1937 (50 Stat. 874) authorizes the sale and disposal of timber from the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands.

§ 115.37 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 115.36 to 115.51 and in contracts made thereunder:

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Regional Administrator" means the Regional Administrator, Region I, Bureau of Land Management, or his authorized representative.

(c) "Revested and Reconveyed Lands" means the Revested Oregon and California and Reconveyed Coos Bay Wagon Road Grant Lands, and other lands administered by the Bureau of Land Management under the provisions of the act of August 28, 1937 (50 Stat. 874).

(d) "O. and C. Lands" means the Revested and Reconveyed lands.

(e) "District Forester" means a district forester of the Bureau who is stationed in Oregon and in or west of Range 8 East, Willamette Meridian, Oregon.

(f) "Signing Officer" means the Government official who has been duly authorized to sign a contract or issue a permit for the disposal of timber from the O. and C. lands, and to supervise operations and take action under such contract or permit.

(g) "Officer in Charge" means such officer as may be designated by the signing officer or other authorized Government official to supervise operations under such contract or permit.

(h) "Timber" means standing and downed trees, logs, and forest products of any type.

§ 115.38 *Disposals which must be made under other statutes; rights under other statutes.* On the Revested and Reconveyed lands the owner of any patented or unpatented mining claim which was located on or after August 28, 1937, shall have no title to the timber, possessory or otherwise, except that he may use timber not disposed of by the United States in the development and operation of the mine only, as provided under the act of April 8, 1948 (62 Stat. 162) and the applicable regulations (§ 185.37 (a) to (e) of this chapter). The owner of a patented or unpatented mining claim which was located prior to August 28, 1937, on Revested and Reconveyed lands classified as timberlands under the act of June 19, 1916 (39 Stat. 218) is not vested with title to the timber thereon but may use so much thereof as may be necessary in the development and operation of his mine until such time as such timber is sold by the United States.

§ 115.39 *Sale and appraisal.* (a) All timber to be sold under the provisions of the act of August 28, 1937 shall be appraised and in no case shall be sold at less than the appraised price. Such timber shall be sold to a responsible, qualified purchaser under the appropriate form of contract. All sales, other than those specified in paragraph (b) of this section, shall be made only after inviting competitive bidding through publication and posting and the submission of either sealed or oral bids.

(b) When the signing officer determines that it is unlikely that competitive interest exists, he may, in his discretion, without publishing, posting, or calling for bids, sell to or for the benefit of any one qualified purchaser, in any 12 consecutive month period, (1) timber on the Revested and Reconveyed lands not to exceed an estimated volume of 100 M bd. ft., or (2) forest products on such lands, the estimated appraised value of which is not more than the current average market value of 100 M bd. ft. of O. and C. timber. However, the above time limitation shall not be applicable to sales of salvage timber, thinnings or sanitation cuttings on small isolated tracts of mature or overmature timber when in the judgment of the signing officer such sale is in the public interest.

§ 115.40 *Qualifications of bidders.* A bidder at a sale of timber or from O. and C. lands may be (a) an individual who is a citizen of the United States, (b) a partnership composed wholly of such citizens, (c) an unincorporated association composed wholly of such citizens or (d) a corporation organized under the laws of the United States or of a State or Territory thereof and authorized to transact business in the State of Oregon. A bidder prior to being declared the successful bidder must supply evidence of ability to comply with the financial obligations and, as required by the signing officer, with the other terms of the contract.

§ 115.41 *Timber sale plan.* From time to time offerings of timber for competitive sale will be made from the Revested and Reconveyed lands to further the purposes of the act of August 28, 1937. Ordinarily, plans for the sale of timber during a calendar year will be developed by the Regional Administrator prior to such year. To assist in the development of a sound annual timber sale plan the Regional Administrator may from time to time consult with and elicit suggestions from prospective purchasers of such timber. At or before the commencement of such calendar year, or as soon thereafter as the timber sale program for such year has been formulated, the plan will be advertised in a newspaper of general circulation in the marketing area in which the timber is located to indicate generally the probable locations, anticipated volumes, and probable time when the various tracts of timber included in the plan will be offered for sale. Notwithstanding such advertising, the Regional Administrator may, subsequent thereto, change, alter or amend the timber sale plan.

§ 115.42 *Publication and posting.* (a) In addition to the advertisement described in § 115.41, notice of any proposed competitive sale must be published prior to the time of such sale at the expense of the Government. The notice of sale of timber on Revested and Reconveyed lands shall be published on the same day weekly for at least two consecutive weeks in a newspaper published within the marketing area in which the timber is located (as established by the Secretary of the Interior).

(b) The notice of sale shall set forth the legal description of the land upon which the timber is located, the nature and estimated quantity of timber to be sold, the appraised price thereof, the minimum bond which will be required, the scale or measurement unit upon which the sale will be based, the minimum deposit acceptable, the method of bidding, and the place where full information relating to the sale and contract stipulations may be obtained, including a copy of these regulations. The notice shall also specify the time for the close of receipt of sealed bids and the time and place for the opening thereof: *Provided, however*, That if the timber is to be disposed of by auction, the notice shall specify the time and place for the auction. The notice shall also state that bids of a sum less than the appraised value of the timber will not be considered and that the right to reject any or all bids is reserved. The notice shall also state that after determination of the high bidder, the deposits made by other bidders will be returned to them. In all sales of timber on O. and C. lands, the notice shall state that the timber shall be given primary manufacture within a designated marketing area which has been established by the Secretary of the Interior. The notice shall also state, where appropriate, the terms upon which the purchaser may obtain access to the timber. In all sales, the notice shall also state that if the successful bidder does not execute a contract, furnish satisfactory bond, and comply with the conditions of § 115.45 within 30 days of acceptance of the bid or does not within such 30-day period furnish evidence of his ability to conform with the local marketing area requirement, if any, then his bid may be rejected and that portion of the deposit representing the minimum deposit required by this part shall be retained as liquidated damages and the balance, if any, returned to him. All bidders are to be warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

(c) Any of the requirements specified in paragraph (b) of this section may be omitted from the notice of sale to be published in a newspaper: *Provided*, That such notice states specifically where complete information can be obtained.

(d) In any proposed non-competitive sale the signing officer may, in his discretion, post a notice of sale in such place and for such period as he may determine. The signing officer may require additional notice, including publication in a newspaper at least once but not more than two times.

(e) A copy of any notice of sale under this section shall be posted throughout the entire period of publication in a conspicuous place in the office in which the bids are to be submitted or the oral auction sale held.

§ 115.43 *Oral auction sales.* The signing officer may conduct sales at oral auction bidding where the timber is tributary to a privately owned and maintained access road which the United States has the right to use and to permit others to use pursuant to an agreement under this part.

§ 115.44 *Deposits with bids.* Deposits shall be submitted with each bid. Such deposits shall be at least 20 percent of any estimated stumpage value which is less than $1,000; at least 10 percent of any estimated stumpage value between $1,000 and $10,000; at least 5 percent of any estimated stumpage value between $10,000 and $100,000; and at least 3 percent of any estimated stumpage value exceeding $100,000. In the discretion of the signing officer, greater deposits may be required by the notice of sale. Every deposit must be made in cash or by money order, cashier's check or certified check made payable to the Treasurer of the United States. Deposits with bids are required as a guarantee of good faith, and when a bond is not executed the deposit of the successful bidder will be retained until the contract is completed. In the final settlement the deposit will be credited as a portion of the whole amount due for the timber purchased and any balance returned, provided the Purchaser has faithfully performed the terms of the contract. If a bond is furnished and accepted, the deposit will be credited as a first installment in the payment for the timber. Checks of unsuccessful bidders will be returned upon the award of the bid.

§ 115.45 *Action on bids.* (a) In the event of tie high sealed bids, the high bidder shall be determined by lot. In oral bidding, except for the first bid, no bid will be considered or recorded which is not higher than the preceding bid.

(b) Where no bid is received within the time specified in the notice of sale for the receipt of bids and if the signing officer determines that no significant rise has occurred in the market price of the timber over the appraised price, he may in his discretion keep open the period for the receipt of bids for not to exceed an additional 90-day period and may sell the timber without readvertising in the following manner:

(1) If during the extended period for the receipt of bids, a written, sealed offer is made for the timber at not less than the advertised minimum appraised price accompanied by the minimum deposit, notice of such offer shall be posted in the office of the district forester and in the office of the regional administrator for a period of not less than 5 days from receipt thereof. If no other such offers are received during the 5-day posting period, the contract may be awarded to the sole bidder, if qualified.

(2) If, however, during such posting period, other offers are received, then all offerors at the end of the original posting period of 5 days shall be permitted to participate in an oral auction sale at which no oral bid will be received which is less than the highest sealed bid received during the 5-day period. The time and place of the oral auction will be designated by the signing officer and the sealed bidders notified thereof.

Timber which has been determined by the signing officer to be salvage in nature, which has been advertised as such, and which is sold under the terms of this section because no bids were received within the time specified in the notice of sale, may be manufactured in any O. and C. marketing area which has been established by the Secretary of the Interior.

(c) In any sale of timber, if the contract amount is not paid in full in advance, the signing officer, in his discretion, and either before or as a condition of the award of the contract, may require a financial statement or other information concerning the ability of the bidder to perform the obligations of the contract, as well as data covering plant, equipment, etc.

(d) The right is hereby reserved to waive technical defects in the advertisement; to reject all bids, or to award the timber for the amount of the highest bid to the next highest qualified bidder when the officer authorized to approve the contract shall deem the high bidder unqualified to fulfill the contractual requirements of the advertisement, or to other than the highest bidder when necessary, pursuant to the act of August 28, 1937 (50 Stat. 874), in order to provide a continued supply of timber to local industry, so as to assure the permanence of the community which is dependent upon such industry. Any award to other than the highest bidder, irrespective of the amount involved, shall be submitted to the Secretary of the Interior for his approval.

(e) In addition to the foregoing, if the successful bidder is (1) an individual, he may be required to furnish a statement that he is a native born citizen or evidence that he is a naturalized citizen; (2) a partnership or an unincorporated association, it may be required to file with the signing officer a certified copy of its written articles of partnership or association and a statement or evidence of the citizenship of each of its members; (3) a corporation, it may be required to file with the signing officer a certified copy of its articles of incorporation. If not organized under the laws of the State of Oregon, such corporation may also be required to file a certificate showing the corporation's authority to do business in the State of Oregon.

§ 115.46 *Contracts.* (a) For sales of timber made under § 115.39 contracts shall be prepared on standard forms, the needs of the sale determining which form is to be used. No essential departure from the requirements of the standard contract forms may be authorized except with the approval of the Secretary. Three copies of the contract shall be transmitted to the successful bidder together with notice that he will be allowed 30 days in which to execute and return the contracts and to furnish any bond required by § 115.47 and any other information required by or under the authority of §§ 115.45 (d) and (f), together with the initial payment or payment in full as may be required under § 115.48.

(b) If the successful bidder fails within 30 days to comply with the requirements of paragraph (a) of this section, then his bid may be rejected and that part of his deposit representing the minimum deposit specified in this part shall be retained as liquidated damages.

§ 115.47 *Bonds.* In sales of timber in which the value of the stumpage does not exceed $5,000 the initial deposit may be retained as a cash bond until the contract is completed. In sales of timber in which the stumpage value exceeds $5,000 but is not over $10,000 a bond of approximately 20 per cent of the value of the timber will be required. In sales of timber in which the stumpage value exceeds $10,000 but is not over $100,000 a bond in an amount of approximately 10 per cent of the estimated value of the timber will be required and in sales in which the stumpage value exceeds $100,000 a bond will be required in an amount to be fixed by the Secretary of the Interior. Ordinarily corporate surety bonds will be required. However, if personal sureties are funished in lieu thereof, such sureties will be accepted and the bond approved only upon a clear showing by the principals and the bondsmen that they are fully capable of carrying out the terms of the agreement.

§ 115.48 *Payment.* (a) No part of the timber sold under the contract may be severed, extracted, or removed unless advance payment has been made therefor.

(b) Payments for timber shall be required in advance of cutting either as a single payment or in the form of installments. In sales having a stumpage value of not more than $1,000 payment will ordinarily be required in full before cutting is started. In sales of timber having a stumpage value of $1,000 to $5,000 payment shall be made in installments of not less than $1,000 each; in sales of from $5,000 to $25,000 in installments of not less than $2,500 each, and in sales of from $25,000 to $100,000 in installments of not less than $5,000 each: *Provided,* That the last installment on any sale may be in an amount equal to the balance due and payable thereon. In sales in which the stumpage value is in excess of $100,000 the amount of the installments shall be determined at the time such sales are authorized: *Provided,* That the amount so fixed shall not be less than $5,000 for each installment.

(c) In any sale of timber for which payment in installments is permitted, the purchaser shall make an initial payment equivalent to two installments as follows: One installment prior to the approval of the contract and the second installment prior to the commencement of cutting or extraction operations.

(d) On the basis of his initial payment of two installments, the purchaser may, under the contract, sever timber of a value not to exceed one-half of such initial payment. Remaining installments shall become due and payable without prior notice whenever the value of the timber severed or the materials extracted under the contract shall equal the sum of the payments made by the purchaser (exclusive of one-half of the initial payment as herein provided).

(e) All payments hereunder shall be made in cash, or by money order, or check made payable to the Treasurer of the United States.

§ 115.49. *Reappraisals.* No reappraisals of timber sold under the contract will be made during the contract term if it is for two years or less. If the term of the contract is for more than 2 years, the signing officer shall, prior to the commencement of the third and each subsequent year, reappraise the timber covered by the contract remaining to be severed or extracted, in accordance with standard appraisal techniques. If the value of the timber remaining uncut is found upon reappraisal to exceed the contract price, timber cut subsequent to such reappraisal shall be charged for at a price not to exceed the reappraisal value. No price less than the contract price shall be established. Notice of the adjusted prices to be fixed under the contract shall be sent, registered mail, by the signing officer to the purchaser at least 30 days before the beginning of the year. Not later than 30 days after receipt of notice, the purchaser may submit his objections, if any, in writing to the signing officer. In the absence of such objections, or if the signing officer does not find the objections sufficient and so advises the purchaser, or subject to final determination of an appeal, if taken, from the decision of reappraisal of the timber, the adjusted prices shall be in effect and govern the payments to be made for all timber severed or extracted during the new contract year.

§ 115.50 *Permits to mining claim owners, Revested and Reconveyed lands.* The owner of any unpatented mining claim located upon Revested and Reconveyed lands shall file an application with the district forecaster for permission to cut and use the timber thereon in accordance with § 185.37 (d) of this chapter.

§ 115.51 *Appeals.* A person aggrieved by any final official action regarding his contract, application for permit, or permit may appeal from the decision of any subordinate official to the Director of the Bureau of Land Management, and from the Director's decision to the Secretary of the Interior pursuant to the rules of practice (Part 221 of this chapter).

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 16, 1953.

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Replaced by 1996

CIRCULAR 1837

Part 115 - Revested Oregon & California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon

Sale of Timber

115.36 - 115.53 - Circular 1837

115.39 & 115.42a - amended by Circular 1849

Note: Montana State Office has copy of this Circular.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Reclamation, Department of the Interior

Circular No. 1838

PART 402—SALE OF LANDS IN FEDERAL RECLAMATION PROJECTS

SUBPART A—PUBLIC LANDS

Sec.

402.1 Purpose of this subpart.
402.2 What lands may be sold; method of sale; limit of acreage.
402.3 Power to sell.
402.4 Citizenship requirement.
402.5 Procedures within the Department.
402.6 Price.
402.7 Notice of sale.
402.8 Terms of sale.
402.9 Contracts.
402.10 Patent.
402.11 Termination or cancellation.

AUTHORITY: §§ 402.1 to 402.13 issued under sec. 15, 53 Stat. 1198, sec 5, 64 Stat. 40; 43 U. S. C. 4851, 43 U. S. C. Sup. 375f. Interpret or apply secs. 1–3, 41 Stat. 605, 606, secs. 1–6, 46 Stat. 367, sec. 11, 53 Stat. 1197; 43 U. S. C. 375, 424–424e, 375a.

§ 402.1 *Purpose of this subpart.* The regulations in this subpart apply to the sale of certain classes of lands that are subject to the reclamation laws and that may be sold under one of the following statutes:

(a) The act of May 20, 1920 (41 Stat. 605; 43 U. S. C. 375);

(b) The act of May 16, 1930 (46 Stat. 367; 43 U. S. C. 424–424e); or

(c) The act of March 31, 1950 (64 Stat. 39; 43 U. S. C. Sup. 375b–375f).

§ 402.2 *What lands may be sold; method of sale; limit of acreage.* (a) Lands which may be sold under the act of May 20, 1920 (41 Stat. 605; 43 U. S. C. 375) are lands, not otherwise reserved, which have been withdrawn in connection with a Federal irrigation project and improved at the expense of the reclamation fund for administration or other like purposes and which are no longer needed for project purposes. Not more than 160 acres of such lands may be sold to any one person. With one exception, such lands must be sold at public auction. If, however, a tract is appraised at not more than $300, it may be sold at private sale or at public auction and without regard to the provisions of the act of May 20, 1920 respecting notice of publication and mode of sale.

(b) Lands which may be sold under the act of May 16, 1930 (46 Stat. 367; 43 U. S. C. 424–424e) are tracts of temporarily or permanently unproductive land of insufficient size to support a family. A purchaser must be a resident farm owner or entryman on the Federal irrigation project where such lands are located and is permitted to purchase not more than 160 acres or an area which, together with lands already owned or entered on such project, does not exceed 320 acres. A resident farm owner means a farm owner who is actually residing on the farm he owns, and a resident entryman means a homestead entryman who is actually residing on the land in his homestead entry. These lands may be sold either at public auction or at private sale.

(c) Lands which may be sold under the act of March 31, 1950 (64 Stat. 39; 43 U. S. C. Sup., 375b–375f) are tracts of land too small to be classed as farm units under the Federal reclamation laws. A purchaser must be a resident farm owner or entryman (as defined in paragraph (b) of this section) on the Federal irrigation project where such lands are located and is permitted to purchase not more than 160 acres or an area which, together with land already owned or entered on such project, does not exceed 160 irrigable acres. These lands may be sold either at public auction or at private sale.

§ 402.3 *Power to sell.* The Commissioner of Reclamation may, in accordance with the regulations in this subpart, sell lands under each of the three statutes listed in § 402.1. An Assistant Commissioner or an official in charge of an office, region, division, district, or project of the Bureau of Reclamation, if authorized in writing by the Commissioner of Reclamation, may also sell lands under the statutes mentioned in accordance with this subpart, and whenever the term "Commissioner" is used in this subpart, it includes any official so authorized.

§ 402.4 *Citizenship requirement.* Before patent may be issued to a purchaser under the regulations in this subpart, he must furnish satisfactory evidence that he is a citizen of the United States.

§ 402.5 *Procedures within the Department.* (a) Before offering any land for sale under any of the statutes listed in § 402.1, the Commissioner should determine that the sale will be in the best interest of the project in which the lands are located and, if the lands sold are to be irrigated, that there is a sufficient water supply for such irrigation.

(b) When a decision is made to offer lands for sale under any of the statutes listed in § 402.1, (1) the Commissioner should notify the Regional Administrator of the Bureau of Land Management in whose region the lands are located, (2) a report showing the status of the lands should be obtained from the Manager of the appropriate office of the Bureau of Land Management, and (3) a report should be obtained from the Geological Survey with respect to the mineral resources of the lands. A copy of the report of the Geological Survey should be furnished to the Manager of the appropriate land office of the Bureau of Land Management for his use in preparing the final certificate.

§ 402.6 *Price.* The price of land sold under this subpart shall be not less than that fixed by independent appraisal approved by the Commissioner.

§ 402.7 *Notice of sale.* The sale of lands at public auction under this part shall be administered by the Commissioner. Notice of such sales shall be given by publication in a newspaper of general circulation in the vicinity of the lands to be sold for either not less than 30 days or once a week for five consecutive weeks prior to the date fixed for any such sale. Under the act of May 20, 1920 (41 Stat. 605; 43 U. S. C. 375) notice of sales of lands appraised at more than $300 shall also be given by posting upon the land. In the case of all sales under this subpart notice may be given by such other means as the Commissioner may deem appropriate. Where lands are to be sold at private sale, no public notice shall be required.

§ 402.8 *Terms of sale.* (a) Under the acts of May 16, 1930 (46 Stat. 367; 43 U. S. C. 424–424e) and March 31, 1950 (64 Stat. 39; 43 U. S. C. Sup., 375b–375f) lands may be sold either for cash or upon deferred payments. A sale providing for deferred payments shall be upon terms to be established by the Commissioner, except that the Commissioner shall require the annual payment of interest at six percent per annum on the unpaid balance.

(b) Under the act of May 20, 1920 (41 Stat. 605; 43 U. S. C. 375) lands may be sold either for cash or upon deferred payments. In connection with a sale providing for deferred payments the Commissioner shall require that not less than one-fifth the purchase price in cash be paid at the time of sale and that the remainder be payable in not more than four annual payments with interest at six percent per annum on the unpaid balance.

(c) All payments shall be made to the official of the Bureau of Reclamation specified in the contract of sale.

§ 402.9 *Contracts.* A contract in form approved by the Commissioner shall be signed by the purchaser at the time of sale and executed on behalf of the United States by the Commissioner. A copy of the contract shall be furnished to the appropriate land office of the Bureau of Land Management for entering in the tract books. The contract shall contain a description of the land to be sold, the price and terms of sale, a full statement by the purchaser respecting his qualifications, including citizenship, a description by the purchaser of his present holdings, and a statement by him of the irrigable acreage of those holdings. The contract shall also contain a statement by the purchaser with respect to his knowledge as to whether the land is mineral or non-mineral in character, as well as all appropriate reservations, mineral and otherwise, required by law to be made on entries and patents. Assignments of contracts may be made only with the consent of the Commissioner and to persons legally qualified to be purchasers.

§ 402.10 *Patent.* When a purchaser has complied fully with the provisions of his contract and with the applicable provisions of law, including the regulations in this subpart, the Commissioner shall issue to the purchaser a final receipt so stating. The receipt shall show any liens that, under the reclamation laws, must be indicated in the final certificate and patent and shall state the statutory authority for such liens. The receipt shall be submitted to the Manager of the appropriate land office of the Bureau of Land Management and the Manager shall prepare a final certificate for the issuance of patent to the purchaser. The Manager shall show in the final certificate the above-mentioned reclamation liens and any reservations that are required by law to be made on the patent.

§ 402.11 *Termination or cancellation.* Immediately upon the termination or cancellation of any contract for nonpayment or other appropriate reason the Commissioner shall notify the proper office of the Bureau of Land Management in order that the tract books located there may reflect the termination or cancellation of the contract.

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 2, 1953.

[F. R. Doc. 53-372; Filed, Jan. 14, 1953; 8:47 a. m.]

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Circular No. 1839

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter W—Timber and Stone Lands

PART 284—TIMBER CUTTING, SALE OR USE

SALE OF DEAD, DOWN, OR DAMAGED TIMBER

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284.2 Sale and cruise of timber.
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CROSS REFERENCES: For amendments of entries, see Part 104 of this chapter. For grazing leases, see Part 160 of this chapter. For oil and gas permits and leases, see Part 192 of this chapter. For timber trespass, see §§ 288.1, 288.2 of this chapter. For Glacier National Park timber disposal regulations of the National Park Service, see Parks, Forests, and Memorials, 36 CFR Part 22. For regulations of the Forest Service, Department of Agriculture, relating to timber, see Parks, Forests, and Memorials, 36 CFR Part 221. For regulations of the Bureau of Indian Affairs relating to sale of timber products, see Indians, 25 CFR Part 62.

AUTHORITY: §§ 284.1 to 284.22 issued under R. S. 2478, sec. 1, 37 Stat. 1015, as amended; 43 U. S. C. 1201, 16 U. S. C. 614.

SOURCE: §§ 284.1 to 284.22 contained in Circular 1520, 7 F. R. 10297, except as noted following sections affected.

§ 284.1 *Statutory authority.* The act of March 4, 1913 (37 Stat. 1015), as amended by the act of July 3, 1926 (44 Stat. 890; 16 U. S. C. 614, 615), permits the sale of all dead or down timber and timber seriously or permanently damaged by forest fires on vacant public lands outside of national forests, including ceded Indian lands, and including lands in the Territory of Alaska, and also lands embraced within unperfected or unapproved claims, grants, or selections over which the Department of the Interior has jurisdiction.

[Circ. 1093, Sept. 11, 1926]

§ 284.2 *Sale and cruise of timber.* (a) Application requesting the sale of timber of the classes described in § 284.1 must be made in duplicate on Form 4–173a, and filed in the proper district land office. The manager will give the application a serial number, note the filing on his serial number register, and fill out the status report on the back of the original and duplicate of the application. He will forward the original application to the regional administrator and the duplicate with his regular returns, to the Bureau of Land Management. If there is no district land office in the State, the application must be filed in the Bureau of Land Management, Washington 25, D. C.

(b) The regional administrator, upon receipt of the application, or whenever timber of the class described is found, for which there is a market, will cause a cruise thereof to be made, the timber, the disposal of which is contemplated, to be marked and measured in accordance with § 284.11. The report should contain the following information:

(1) Description of the land upon which the timber is situated, by township and range and legal subdivisions thereof, if surveyed, or by natural objects sufficient to identify the land, if unsurveyed.

(2) Method of cruising used.

(3) Approximate percentage of the timber on the described area that is dead, down, or damaged by fire or insects, or threatened with damage, and the nature of the threat.

(4) The scale in thousand feet board measure of timber subject to sale and the kind of timber involved.

(5) The approximate market value of the timber per thousand feet board measure, the prospects of a sale, the location of the timber, and a minimum stumpage price per thousand feet board measure therefor; and

(6) The method and approximate expense of disposing of the brush, tops, lops, and other forest debris which will result from the felling and removing of the timber.

§ 284.3 *Advertisement; posting of notice.* After consideration of the report, the Regional Administrator or other authorized officer will, if he deems it advisable, offer the timber for sale under sealed bids by advertising as follows:

(a) In cases of small quantities of timber amounting in value to $1,000 or less, the sale shall be advertised for at least ten days by the posting of notices only.

(b) Where the timber to be sold exceeds $1,000 in value, the sale shall be advertised in a newspaper of general circulation in the county in which the timber to be sold is situated, once a week for four consecutive weeks next preceding the time set for the opening of the bids. And if the proposed sale be for 20,000,000 feet, board measure, or more, of timber available by location to a single logging operation, an advertisement of the proposed sale shall be inserted once in two lumber trade journals of general circulation. During the period of advertising, copies of the advertisement shall be posted where they will attract the notice of the general public.

(c) Where, in the judgment of the Regional Administrator, immediate sale of timber exceeding $1,000 in value is necessary in order to prevent loss to the Government due to expected rapid deterioration of the timber from insect or fungus attacks or from other causes, the sale may be effected, notwithstanding the provisions of paragraph (b) of this section, after the posting of public notices for not less than ten days and the publication of notice once during the ten-day posting period in a newspaper of general circulation in the county wherein the timber to be sold is situated.

[Circular 1835] NOVEMBER 26, 1952.

Reprint, January 30, 1953, of Circular No. 1093, September 11, 1926, Circular No. 1511, June 4, 1942, Circular No. 1520, December 1, 1942, and Circular No. 1835, November 26, 1952.

§ 284.4 *Information to be given in notice of sale.* The notice of sale must announce the time and place of filing bids; contain a careful description of the land on which the timber is situated, giving the township and range and legal subdivision, or approximate legal subdivision, whether surveyed or unsurveyed, and shall also designate the location with reference to water courses, mountain tops, or other well-known natural objects; and state the scale in board feet and minimum stumpage value of the timber to be sold, the sum required to be deposited with the bid, the conditions by which the purchaser will be bound, and the name and address of the regional administrator, from whom full information can be obtained. It shall also be stated that bidders offering a sum based on a rate less than the minimum stumpage price of the timber mentioned therein will not be considered and that the right to reject any or all bids is reserved.

§ 284.5 *Submission of bids; deposit required; citizenship requirements.* (a) Each bid submitted must be enclosed in a sealed envelope and transmitted to the officer in charge having jurisdiction of the timber sale. The envelope must be marked "Bid for timber, sale date ------------, 19----."

(b) Only bids for all of the timber offered in the advertisement for sale as a unit will be considered. Each bid should state clearly the amount per thousand feet which the bidder will pay for the timber, as well as the total amount offered.

(c) Each bid shall be accompanied by a certified check or post-office money order for at least 20 percent of the total amount bid, the remittance to be made payable to the Treasurer of the United States.

(d) Every bidder, if an individual, will be required to show that he is a citizen of the United States or has declared his intention to become such citizen; if a partnership or association, that each member of the firm is such a citizen or declarant; or, if a corporation, that the corporation was organized under the laws of the United States or of some State, Territory, or possession thereof, and that its stock is owned by such citizens or declarants.

§ 284.6 *Action on bids.* The regional administrator will number the bids consecutively in the order in which they are received, and endorse thereon the date and hour of receipt and will on the day and at the hour set therefor open said bids and award said timber to the highest bidder. The regional administrator will, immediately upon the acceptance of a bid, notify the bidder thereof. When two or more bids in the same amount are received, or it appears that a monopoly might be created by an award to the highest bidder, or if it appears to be against the public interest for any other reason to accept the highest or the only bid, the regional administrator, when authorized to execute the contract, and the Director, Bureau of Land Management, in other cases, will make the award or reject the bids, as the circumstances may warrant.

§ 284.7 *Contract and bond.* The successful bidder will be allowed 30 days from notice of the award to execute, in quadruplicate, Form 4–173c "Timber Contract", and file therewith a cash bond or a bond having as surety a bonding company shown in the then current approved list of the Treasury Department. The bond should be prepared and executed on Form 4–173d and shall be conditioned on the faithful performance of the contract and on the observance of the applicable laws and regulations. The penalty of the bond shall be fixed by the officer who is authorized to execute the contract in a sum of not less than 25 percent of the amount of the bid. If the contract and bond are not submitted within the 30 days, the officer who is authorized to execute the contract will revoke the award by written notice, and award the timber to the next highest bidder.

§ 284.8 *Action on contract; notice to purchaser.* (a) The regional administrator will execute or disapprove the contract when the purchase price of the timber does not exceed 15,000,000 feet, board measure. Where the quantity exceeds that amount and is not in excess of 40,000,000 feet, board measure, the sales must be authorized by the Director, Bureau of Land Management. Where the quantity exceeds 40,000,000 feet, board measure, the sales must be authorized by the Secretary of the Interior. The bond guaranteeing the faithful performance of a contract shall be approved by the officer approving the contract.

(b) When a contract and bond are approved, the regional administrator will require the purchaser to complete payment for the timber.

(c) The payment must be made by certified check or post-office money order payable to the Treasurer of the United States. The payment will be forwarded to the Director, when he must approve the contract. The manager will be advised as to the payment.

§ 284.9 *When deposit will be forfeited or returned.* (a) Should a bidder whose bid has been accepted fail to submit a contract and bond, as required by § 284.7, the amount called for therein will be collected and retained by the United States as a forfeit.

(b) Upon the acceptance of a bid, the remittances of the bidders whose bids were rejected shall be returned to them.

§ 284.10 *Commencement of cutting operations.* The cutting and removal of the timber may be commenced at any time after the delivery of the contract to the purchaser.

§ 284.11 *Marking and measurement of timber.* Before timber is offered for sale, it will be carefully cruised under the supervision of the regional administrator. Since the timber sold under authority of the acts cited in § 284.1 will usually consist of only a part of the trees within a given area and a small amount in isolated or scattered tracts, the amount to be sold will be definitely ascertained through a determination of the volume of individual trees and the marking of the trees before the timber is offered for sale. In a white pine, ponderosa pine, or southern pine region, this determination of volume will be made on the basis of the Scribner Decimal C Log Rule with a maximum log length of 16 feet and in the Douglas fir region upon the basis of the Scribner Decimal C Log Rule with a maximum log length of 32 feet.

§ 284.12 *Forest Practice Rules.* All timber sales will be made subject to the provisions of the "Forest Practice Rules," which are appended to and made a part of the timber contract. (See § 284.7.)

§ 284.13 *Report by purchaser.* The purchaser shall furnish the regional administrator such reports on the logging operations as that officer may require.

§ 284.14 *Expense chargeable to purchaser, on default.* If the purchaser fails to comply with any of the provisions of his contract, as to the disposal of the debris, or otherwise, and it becomes necessary for the United States to remove the debris or to incur other expense because of such default, the expense shall be charged to the purchaser: *Provided, however,* That written notice shall first be given by the regional administrator that such action will be taken if the rules are not complied with within 30 days from the service of such notice.

§ 284.15 *Logging operations.* The regional administrator shall see that so far as practicable all branches of the logging operations keep pace with each other, and the piling or burning of the brush and other debris shall not be allowed to fall behind the cutting and removing of the logs.

[Circ. 1093, Sept. 11, 1926]

§ 284.16 *Extension of period for cutting operations.* The regional administrator shall determine the period within which all of the timber embraced within a sale shall be cut and removed, and completion of the cutting and removing within such period as shall be thus fixed shall be made a condition in the contract and in the bond. The action of the regional administrator shall be governed by the quantity of timber involved, the topography of the land, the accessibility of the timber, and any other circumstances that may have an influence on the cutting and removing. Owing to the nature of the timber subject to disposal under §§ 284.1 to 284.22, the cutting should be done as rapidly as possible and the final time limits should be restricted as far as practicable logging conditions will permit. Any extension of the period fixed in the contract will be granted only upon a showing that the completion of the cutting was unavoidably delayed by causes over which the purchaser had no control and that the interests of the Government will not be prejudiced thereby, and must be approved by the officer executing the contract.

[Circ. 1093, Sept. 11, 1926, as amended by Circ. 1511, 7 F. R. 4496, Circ. 1520, 7 F. R. 10297]

§ 284.17 *Timber on unperfected claims, selections, and grants.* Timber of

the character described in the act of March 4, 1913, as amended, located upon existing unperfected claims and upon unapproved selections and grants, may be disposed of in the same manner and under the same conditions as set forth in §§ 284.1 to 284.16: *Provided, however,* That an application shall first be filed with the proper district land office by such claimant, selector, or grantee, or by a prospective purchaser, with the written consent of such claimant, selector, or grantee, requesting that the timber on said claim, selection, or grant be offered for sale. Nothing herein shall prohibit such claimant, selector, or grantee from bidding for the timber thus offered.
[Circ. 1093, Sept. 11, 1926]

CROSS REFERENCE: For procedure in connection with applications, see § 284.2.

§ 284.18 *Rights of settlers, homesteaders, and mineral claimants.* Nothing in the act of March 4, 1913, as amended, or in §§ 284.1 to 284.22, shall be construed to abrogate or in any way modify the rights of settlers or homestead entrymen to cut and dispose of timber on their homestead claims, as explained in §§ 284.36 to 284.39, or the rights of miners to the enjoyment of the surface embraced within the area of their mining claims, as provided by section 2322, United States Revised Statutes (30 U. S. C. 26).
[Circ. 1093, Sept. 11, 1926]

§ 284.19 *Timber for use of settlers or residents.* If it shall be shown that there are settlers or residents within the vicinity of the vacant lands involved, who are in urgent need of timber for domestic purposes and it shall be necessary to procure the same from lands covered by applications for dead, down, or damaged timber, permits may be granted under applications filed in accordance with the provisions contained in the acts of June 3, 1878 (20 Stat. 88; 16 U. S. C. 604–606), or March 3, 1891 (26 Stat. 1093; 16 U. S. C. 607), and acts amendatory thereof and supplemental thereto: *Provided, however.* That said applications shall be filed prior to the advertising of the timber for sale, as set forth in §§ 284.3 aud 284.4. The amounts of timber thus applied for shall be deducted from the amount offered for sale and the advertisement shall state that the sale shall be subject to the rights of such applicants to procure the amounts of timber applied for.
[Cir. 1093, Sept. 11, 1926]

§ 284.20 *Disposition of moneys.* All sums deposited and paid in connection with timber sales made under §§ 284.1 to 284.22 will be deposited in the Treasury as required by the act of March 4, 1913, as amended, (37 Stat. 1015; 44 Stat. 890; 16 U. S. C. 614, 615), or as otherwise provided by law.

§ 284.21 *Investigation of cutting operations.* The regional administrator shall cause investigations to be made from time to time to determine whether or not the law and rules and regulations have been complied with.
[Circ. 1093, Sept. 11, 1926]

§ 284.22 *Unauthorized cutting.* The cutting or removing of the timber referred to in §§ 284.1 to 284.21 in any other manner than that authorized by such sections will be considered a trespass.
[Circ. 1093, Sept. 11, 1926]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

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192.120 - See Circ. 1863

192.42 (a)(b)(f)-(g) See circ. 1875

Replaced by 1927

Circular No. 1840

PART 192—OIL AND GAS LEASES

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AUTHORITY: §§ 192.1 to 192.161 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

NOTE: Until an election is filed as provided for in this part, leases issued prior to August 8, 1946, shall continue to be governed by the pertinent provisions of this part theretofore in force as well as by the regulations in this part to the extent that they are applicable.

GENERAL PROVISIONS

§ 192.1 *Applicability of amendatory act to existing leases.* Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U. S. C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

[Circ. 1719, Dec. 29,1948]

§ 192.2 *Helium.* The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

[Circ. 1624, Oct. 28, 1946]

§ 192.3 *Acreage limitations on leases.* (a) No person, association, or corporation, except as in the act provided, may hold more than 15,360 acres in any one state, whether directly through the ownership of leases or interests in leases, or indirectly as a member of an association, or associations, or as a stockholder of a corporation, or corporations, holding leases or interests therein or both. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior and all operating, drilling, or development agreements approved under section 17 (b) of the act, other than communitization agreements, and all leases issued under sections 18 and 19 of the act shall not be included in computing accountable acreage under section 27 of the act.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of

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Reprint, January 30, 1953, of Circular No. 1624, October 28, 1946, as amended by Circular No. 1624a, June 6, 1947, Circular No. 1649, July 17, 1947, Circular No. 1650, July 24, 1947, Circular No. 1653, August 21, 1947, Circular No. 1662, October 29, 1947, Circular No. 1686, June 25, 1948, Circular No. 1719, December 29, 1948, Circular No. 1719, Amendment No. 1, February 28, 1949, Circular No. 1727, April 5, 1949, Circular No. 1769, October 13, 1950, Circular No. 1773, November 29, 1950, Circular No. 1794, July 23, 1951, Circular No. 1821, June 16, 1952, Circular No. 1823, June 17, 1952, and Circular No. 1829, July 31, 1952.

the corporation's or association's accountable acreage. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

[Circ. 1624, Oct. 28, 1946]

(c) No lease will be issued and no transfer will be approved until it has been shown pursuant to the requirements of § 192.42 (e) (4) that the lessee or transferee is entitled to hold the acreage. Any party found to hold or control accountable acreage computed in accordance with the principles above set forth in excess of the prescribed limitations shall be given thirty days within which to file proof of the reduction of his holdings or control so as to conform with the prescribed limitation.

[Circ. 1773, Nov. 29, 1950]

§ 192.4 *Acreage limitations on options.* (a) Acreage held under a nonrenewable option, valid only for two years or such longer period as may be authorized by the Secretary, for the purpose of geological or geophysical exploration, shall not be chargeable under § 192.3, but no optionee, except as permitted by the act of August 8, 1946, may hold options at any one time for more than 100,000 acres in any one State.

[Circ. 1624, Oct. 28, 1946]

(b) No such option shall be taken for more than two years without the prior approval of the Secretary of the Interior, except that an option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and two years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the Director, Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application by the Secretary.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

[Circ..1773, Nov. 29, 1950]

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 192.20) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the two-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

[Circ. 1624, Oct. 28, 1946]

(e) No acreage shall be chargeable under options taken prior to June 1, 1946, on which geological or geophysical exploration has been actually made if exercised on or before August 8, 1950, but no such option not so exercised will be recognized by the Department, thereafter, for any purpose.

[Circ.1624a, June 6, 1947]

(f) Each optionee must file with the Director, Bureau of Land Management, within 90 days after December 31 and June 30 of each year, a statement showing as of the prior December 31 and June 30, respectively, (1) name of optioner and serial number of lease, application or offer for lease subject to the option, (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each state and total acreage thereof.

[Circ. 1773, Nov. 29, 1950]

(g) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

[Circ. 1624, Oct. 28, 1946]

§ 192.5 *Lands within one mile of naval petroleum or helium reserves.* No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the Secretary, after consultation with the head of the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

[Circ. 1773, Nov. 29, 1950]

§ 192.6 *Boundaries of known geologic structures and productive limits of producing oil or gas fields and deposits.* The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946. Maps or diagrams showing the boundaries of known geologic structures of producing oil or gas fields and of the productive limits of producing oil or gas deposits will be placed on file in the appropriate district land office, and office of the oil and gas supervisor. Any lessee or his operator may apply to have a determination made as to whether or not the land upon which he intends to drill a well is inside or outside the productive limits of a producing oil or gas deposit. The application should be accompanied by all available geologic data which in his opinion have a bearing on the matter.

[Circ. 1624, Oct. 28, 1946]

§ 192.7 *Agreements to compensate for drainage.* Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the Director, Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

[Circ. 1624, Oct. 28,1946]

§ 192.8 *Protection of leased lands from drainage.* (a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR, 221.21.

(b) A period equal to that for which compensatory royalty is paid in lieu of drilling on any Federal lease under this section or § 192.7 shall be added to its primary term where there is no producing well on the lease.

[Circ. 1624, Oct. 28, 1946;
Circ. 1650, July 24, 1947]

§ 192.9 *Leases for wildlife refuge lands.* No noncompetitive oil and gas lease under the act will be issued for lands within a wildlife refuge (a) unless those lands are subjected to an approved cooperative or unit plan, and (b) unless the lease contains a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service. Subject to the same two conditions, competitive leases also may issue for refuge lands. Even if these conditions are not met, competitive leases may nevertheless issue if Fish and Wildlife Service reports that oil and gas development may be conducted without destroying the usefulness of the lands as a sanctuary for wildlife, or, in the absence of such a report, wherever the Secretary determines that the national interest in securing the contemplated oil and gas production outweighs the importance of maintaining the refuge as a sanctuary for wildlife.

[Circ. 1662, Oct. 29, 1947]

COOPERATIVE CONSERVATION PROVISIONS

§ 192.20 *Cooperative or unit plans.*[1] The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges.

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[1] For the extension of leases committed to a unit plan, see § 192.122.

[Circ. 1624, Oct. 28, 1946]

§ 192.21 *Application for approval of plan.* The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit area is situated.

[Circ. 1624, Oct. 28, 1946]

§ 192.22 *Communitization or drilling agreements.* (a) The Secretary is authorized when separate tracks under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

[Circ. 1624, Oct. 28, 1946]

§ 192.23 *Approval of operating, drilling or development contracts without regard to acreage limitations.* (a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipe-line companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the Director, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

[Circ. 1624, Oct. 28, 1946]

§ 192.24 *Combinations for joint operation of refinery, or for transportation of oil.* Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section, together with enough copies to permit retention of 5 copies by the Department after approval, should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.[2]

[Circ. 1624, Oct. 28, 1946]

§ 192.25 *Subsurface storage of oil or gas.* (a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

[Circ. 1624, Oct. 28, 1946]

ISSUANCE OF LEASES

§ 192.40 *Classes and term.* All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field, such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ per cent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, within a six-mile square, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent. All leases, except those issued as renewals of 20-year leases, will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1773, Nov. 29, 1950]

§ 192.40a *Dating of competitive and noncompetitive oil and gas leases.* All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

[Circ. 1719, Dec. 29, 1948]

§ 192.41 *Leases for lands wholly or partly within unit areas.* (a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

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[2] Rights-of-way for oil and gas pipe lines may be granted as provided for in §§ 244.48 to 244.52 of this chapter.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

[Circ. 1773, Nov. 29, 1950]

NONCOMPETITIVE LEASES

§ 192.42 *Offer to lease, and issuance of lease.* ~~(a) To obtain a noncompetitive lease, an offer to accept such a lease must be made on Form 4-1158, "Offer and Lease Form", or on unofficial copies of that form in current use, provided that the copies are exact reproductions on one page of both sides of the official approved one page form, and are without additions, omissions, or other changes or advertising, except that the copies shall include the following statement above the signature of the offeror: "This form is submitted in lieu of official Form 4-1158 and contains all of the provisions thereof as of the date of filing of this offer." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. Form 4-1158, or a valid reproduction of the official form, will also constitute the lease, when signed by the manager of the land office.~~

[Circ. 1773 Nov. 29, 1950]

See Circ. 1875

~~(b) Five copies of Form 4-1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States in which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C. If less than five copies are filed, the offer will not be rejected, if not otherwise subject to rejection, until 30 days from filing have elapsed and if during that period the remaining required copies are filed, the offeror's priority will date from the date of the first filing. If the additional copies are not filed within the 30 day period, the offer will be rejected and returned and will afford no priority to the offeror. Should the additional copies be filed after the 30 day period but before the offer has been rejected, the offeror will have a priority as of the later filing date. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.~~

[Circ. 1821 June 16, 1952]

*Page size 8½ x 14 inches.

(c) The offeror shall mark one of the copies first filed at the top with the word "original". If that is not done, the manager will so mark one copy. If there is any variation in the land descriptions among the five copies, the copy marked "original" shall govern as to the lands covered by the lease.

[Circ. 1773, Nov. 29, 1950]

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent. An offer may be made by a legal guardian or trustee in his name for the benefit of a non-alien minor or minors but an offer may not be filed by a minor. Each offer must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than 2,560 acres except where the rule of approximation applies, and may not be for less than 640 acres except in any one of the following instances:

(1) Where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey.

(2) Where the land is surrounded by lands not available for leasing under the act, except that where the tract was isolated as the result of a partial relinquishment of a lease, no lease offer will be received for the relinquished land other than one filed under the conditions prescribed in subparagraph (1) of this paragraph for a period of 60 days from and after the date of filing of the partial relinquishment.

[Circ. 1823 June 17, 1952]

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge, except as provided in paragraph (g) of this section, even though the offer should be rejected or withdrawn in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Except in a case where an officer of a corporation signs an offer on behalf of the corporation (as to which see paragraph (f) (5) of this section), evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror; and in addition, if such offeror is an individual, a statement over the offeror's signature setting forth the offeror's citizenship and whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 chargeable acres.

(4) If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor in the same State exceed 15,360 acres. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(5) If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statement as to the citizenship and holdings of each of the minors; and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

(6) If the offer is made by an association (including a partnership), it must be accompanied by a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

[Circ. 1821 June 16, 1952]

See Circ. 1875

~~(f) If the offeror is a corporation, the offer must be accompanied by:~~

~~(1) A certified copy of the articles of incorporation, or appropriate reference by land office serial number of the record of the Bureau in which such a copy already has been filed, with statement as to any subsequent amendments.~~

~~(2) A statement showing the percentage of each class of the corporation's stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be, or who the corporation has reason to believe are, aliens or who have addresses outside of the United States, indicating which classes of stock have voting rights.~~

~~(3) A list of the names and addresses of aliens or stockholders living outside of the United States, if more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by, or on behalf of such persons, the list to show the amount and class of stock held by each, and to the extent known to the corporation, or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.~~

~~(4) A separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 per cent of the stock of the corporation.~~

~~(5) A copy either of the minutes of a meeting of the board of directors or of the bylaws indicating that the officer signing the offer to lease has authority to do so, or in lieu of such a copy, a certificate of the secretary or the assistant secretary of the corporation to that effect, over the corporate seal.~~

[Circ. 1773, Nov. 29, 1950]

See Circ. 1875

~~(g) An offer will be rejected and returned to the offeror, and it will confer no priority if it is not completed in accordance with the regulations in Parts 191 and 192 and the instructions printed on the lease form, and accompanied by the payments and documents required by such regulations and instructions, except that where a corporation has previously filed in any land office any of the documents required by paragraph (f) of this section a reference to that file may be made in lieu of the document together with a statement as to any changes therein since the document was filed. When an offer is rejected under this paragraph, the offeror will be given an opportunity to file a new offer within 30 days from the date of service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The corrected offer will retain the same serial number, but the effective date of priority will be as of the date such new offer was received.~~

[Circ. 1794 July 23, 1951]

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, Form 4-1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4-1158 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4-1158 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

[Circ. 1773, Nov. 29, 1950]

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section, except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

[Circ. 1821 June 16, 1952]

(m) No lease shall be issued before final action has been taken on (1) any prior offer to lease the land, (2) any subsequent offer to lease the land that is based upon an alleged preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offerer or petitioner is found to be qualified and entitled to receive a lease on the land.

[Circ. 1829 July 31, 1952]

[§ 192.43 *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office in the State, the lands shall be open to further oil and gas lease offers. Offers received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed in § 295.8 of this chapter.

[Circ. 1773, Nov. 29,1950]

§ 192.44 *Pending applications.* Applications filed prior to the effective date of the regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4-213, except:

(a) An applicant may, without losing his priority, file Form 4-1158 "Offer and Lease Form" for the land described in his application, pursuant to § 192.42, but without paying the required filing fee, and

(b) From the date of issuance of the regulations in this part until their effective date, Form 4-1158, or unofficial copies thereof, which are exact reproductions on one page* of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

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*Page size 8½ x 14 inches.

[Circ. 1773, Nov. 29, 1950]

COMPETITIVE LEASES

§ 192.50 *Designation and offer of lands for lease by competitive bidding.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

[Circ. 1624, Oct. 28, 1946]

§ 192.51 *Notice of lease offer.* Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the Director, Bureau of Land Management may authorize. The notice will be published at the expense of the Government. A copy of the notice will be posted in the district land office during the period of publication. Such notice will set the day and hour of sale and will state whether the lease is offered by sealed bids or at public auction. If by public auction, the offer will be made at the land office of the district in which the lands are situated, or at such other place as may be fixed in the notice. If by sealed bids, full information will be given as to how and when bids are to be submitted. All bidders are warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

[Circ. 1624, Oct. 28, 1946]

§ 192.52 *Qualifications of successful bidder.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4). If the successful bidder is a corporation, it must also file a statement similar to that required by § 192.42 (b).

[Circ. 1773, Nov. 29, 1950]

§ 192.53 *Award of lease.* Following receipt of the report of the auction from the manager, or the opening of the sealed bids, the Director, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 192.100. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

[Circ. 1624, Oct. 28, 1946;
Circ. 1719, Dec. 29, 1948]

§ 192.54 *Form of lease.* Competitive leases will be issued on Form 4-213 and the rentals and royalties payable thereunder will be set forth in Schedule "B" affixed thereto and made a part thereof.

[Circ. 1624, Oct. 28, 1946]

EXCHANGE AND RENEWAL LEASES

§ 192.60 *Application to exchange lease for a new lease.* Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 192.80, 192.81 and 192.82. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate district land office and must show full compliance by the applicant with the terms of the lease and applicable regulations.

[Circ. 1624, Oct. 28, 1946]

§ 192.61 *Application for renewal.* (a) Twenty year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 192.80, 192.81 and 192.82. An application to renew should be filed in triplicate with the manager of the district land office in which the leased land is located or if in a State in which there is no district land office, in the Bureau of Land Management at least 90 days, but not more than six months, prior to the expiration of its term. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 per cent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

[Circ. 1624, Oct. 28, 1946]

§ 192.62 *Action on application.* If the outstanding obligations in excess of five per cent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the costs of operations, including the payment of overriding royalties or payments out of production, shall be determined by the Director, Bureau of Land Management, to constitute such a burden such royalties and payments shall be reduced to not more than 5 per cent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing, at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

[Circ. 1624, Oct. 28, 1946]

§ 192.63 *Form of lease.* Renewal and exchange leases will be issued on Form 4-213. The rentals and royalties payable thereunder will be set out on Schedule C or D as may be appropriate, which schedule is attached thereto and made a part thereof.

[Circ. 1624, Oct, 28, 1946]

LEASES ON PATENTED OR ENTERED LAND

§ 192.70 *Preference right of patentee or entryman to a lease.* (a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

[Circ. 1624, Oct. 28, 1946]

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

[Circ. 1773, Nov. 29, 1950]

§ 192.71 *Lands in entries or claims not impressed with a reservation of oil and gas.* (a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither, the entry will be canceled or his settlement rights denied. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the offeror, unless the entryman or settler has a preference right, but if the entryman or settler prevails in a contest, the offer will be rejected.

[Circ. 1773, Nov. 29, 1950]

§ 192.72 *Showing required of oil and gas offerors for unsurveyed lands.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

[Circ. 1773, Nov. 29, 1950]

RENTALS AND ROYALTIES

§ 192.80 *Rentals.* Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued under section 17 of the act, wholly outside of the known geologic structure of a producing oil or gas field:

(1) For the first lease year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre or fraction thereof.

(4) For the sixth and each succeeding year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(b) On leases wholly or partly within the known geologic structure of a producing oil or gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan that contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days notice to the lessee that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the leased lands, rental of $1.00 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section, shall apply to the acreage not within a participating area, except that the rental for the second and third lease years for such acreage shall be 25 cents per acre or fraction thereof.

(3) If issued competitively, an annual rental, prior to a discovery on the leased lands, of $1.00 per acre or fraction thereof, unless a different rate of rental is prescribed in the lease.

(c) On leases issued in any other way, an annual rental of $1.00 per acre or fraction thereof.

[Circ. 1773, Nov. 29, 1950]

§ 192.81 *Minimum royalty.* On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year

[Circ. 1624, Oct. 28, 1946]

§ 192.82 *Royalty on production.* (a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

[Circ. 1624, Oct. 28, 1946]

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

[Circ. 1794 July 23, 1951]

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

[Circ. 1624, Oct. 28, 1946]

§ 192.83 *Limitation of overriding royalties.* Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production shall be suspended when the average production per well per day averaged on the monthly basis is (a) as to oil, 15 barrels or less and (b) as to gas, 500,000 cubic feet or less. The limitations in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

[Circ. 1769, Oct. 13, 1950]

BONDS

§ 192.100 *Amount of bonds required of lessee.* (a) The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $1 per acre annual rental but in no case less than $1,000 nor more than $5,000, conditioned on compliance with all the terms of the lease, and such a bond must also be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed a noncompetitive lessee will be required to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights. In all other cases where a bond is not otherwise required, a $1,000 bond must be filed for compliance with the lease obligations not less than 90 days before the due date of the next unpaid annual rental, but this requirement may be successively dispensed with by payment of each successive annual rental not less than 90 days prior to its due date.

(c) All leases shall provide that where a $5,000 bond is not already being maintained a general lease bond in the penal sum of $5,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $5,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bonds affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

(d) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 191.14 of this chapter may be furnished for the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

[Circ. 1624, Oct. 28, 1946;
Circ. 1719, Dec. 29, 1948]

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nation-wide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 1913; 30 U. S. C. 351–359), or at the rate of $25,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State or Territory held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State or Territory constitutes two units. In lieu of a surety bond a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

[Circ. 1794 July 23, 1951]

§ 192.101 *Form of bonds.* Bonds furnished by lessees will be on Form 4–208g; those furnished by operators on Form 4–238; bonds furnished in lieu of other bonds, pursuant to § 192.100 (e), will be on Form 4–1167 for surety bonds or on Form 4–1168 for personal bonds.

[Circ. 1794 July 23, 1951]

CONTINUATION OR EXTENSION OF LEASE[3]

~~§ 192.120 *Single extension as to lands not in a producing field.* The record title holder of any noncompetitive lease, as to which a notice of election has been filed pursuant to section 15 of the act of August 8, 1946, or which was issued after the passage of that act, maintained in compliance with the law and the regulations of this part, by filing his application therefor within the period of 90 days prior to the expiration date of the lease, may obtain a single extension of the primary term of the lease for an additional five years, unless then otherwise provided by law, as to all of the leased lands or any legal subdivision thereof which, on the expiration date of the lease, are not within the known geologic structure of any producing oil or gas field or have not been withdrawn from leasing. A withdrawal, however, will prevent an extension only (a) if notice thereof was mailed to the lessee by registered mail at least 90 days prior to the expiration date of the lease and (b) if actual drilling operations on the leased lands were not commenced prior to the effective date of such withdrawal, or, if so commenced, have not been diligently prosecuted until and including such expiration date.~~

See Circ. 1863

[Circ. 1624, Oct. 28, 1946]

§ 192.121 *Continuation of lease as to lands within producing fields and on termination of production.* (a) Any noncompetitive lease or portion thereof which is not subject to a single extension of five years solely because the lands are within the known geologic structure of a producing oil or gas field at the date of expiration of the primary term of the lease shall continue in effect for a period of two years from the expiration date of the primary term of the lease where drilling operations are being diligently prosecuted on such date and, upon discovery, for so long thereafter as oil or gas is produced in paying quantities.

(b) Any lease issued under the act upon which production is had during its primary term or any extensions thereof, shall not terminate when the production ceases if diligent drilling operations are in progress on the leased land during the period of nonproduction.

[Circ. 1624, Oct. 28, 1946]

§ 192.122 *Extension for term of cooperative or unit plan.* (a) Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

(b) Any other lease issued under any section of the act committed to any such plan that contains a general provision for the allocation of oil or gas shall continue in effect as to the land committed so long as the lease remains subject to the plan, provided oil or gas is discovered under the plan prior to the expiration date of the primary term of such lease.

[Circ. 1624, Oct. 28, 1946]

§ 192.123 *Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.* Any lease or portion thereof eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1624, Oct. 28, 1946]

§ 192.130 *Preference right to a new lease.* (a) Upon the expiration of its five year term the record title holder of a noncompetitive lease issued prior to August 8, 1946 and maintained in good standing, who has not filed a notice of election pursuant to section 15 of the act of August 8, 1946, may file an offer on Form 4–1158 for a new lease for the same land pursuant to the provisions of section 1 of the act of July 29, 1942 (56 Stat. 726, 30 U. S. C. sec. 226b), provided the leased land is not then within the known geologic structure of a producing oil or gas field. Any lease issued under this section will be for a period of five years and so long thereafter as oil or gas is produced as provided in section 17 of the act and will be subject to the rules and regulations then in force.

(b) To obtain such a new lease, the lessee must, within the period beginning 90 days prior to the date of expiration of the lease and ending on the date of expiration, submit an offer on Form 4–1158 in accordance with § 192.42, accompanied by a proper filing fee and the first year's rental.

[Circ. 1773, Nov. 29, 1950]

ASSIGNMENTS OR TRANSFERS

§ 192.140 *Assignments or transfers of leases or interests therein.* Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. Subject to final approval by the Director, Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 192.141 and 192.142. No assignment will be approved if the assignee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

[Circ. 1624, Oct. 28, 1946;
Circ. 1719, Dec. 29, 1948]

§ 192.141 *Requirements for filing of transfers.* (a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4), (5) and (f).

[Circ. 1821 June 16, 1952]

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties. Form 4–1175, "Assignment affecting Record Title to Oil and Gas Lease", or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of official Form 4–1175 and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. Form 4–1175, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office.

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[3] For extension of lease (a) because of suspension of operations and production, see § 191.26 of this chapter; (b) by payment of compensatory royalty, see § 192.8; (c) committed to communitization or drilling agreement, see § 192.22; (d) used for subsurface storage, see § 192.25; (e) segregated by assignment, see § 192.144.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 192.145 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

[Circ. 1794 July 23, 1951]

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease, or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application, and the statement required by § 192.42 (e) (3).

[Circ. 1821 June 16, 1952]

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide bond on either form, 4–1167 or 4–1168, applicable to the State and the act under which the lease issued, no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information specified in Instructions, Form 4–1175,[1] relating to citizenship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

[Circ. 1794 July 23, 1951]

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 192.42 (1).

[Circ. 1773, Nov. 29, 1950]

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 192.161.

[Circ. 1624a, June 6, 1947]

§ 192.142 *Separate assignments required for transfer of record title to leases.* A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

[Circ. 1624, Oct. 28, 1946]

§ 192.143 *Effect of assignment of particular tract.* When an assignment is made of all or part of the record title to a portion of the acreage in a lease, the assigned acreage becomes segregated into a separate and distinct lease. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease through an application filed in his own name and the assignment after its approval will be the basis of a new record.

[Circ. 1624, Oct. 28, 1946]

§ 192.144 *Extension of leases segregated by assignment.* (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases assigned out of leases which are in their extended term because of production shall continue in effect for two years and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1624, Oct. 28, 1946]

§ 192.145 *Royalty interests in oil and gas leases and assignments thereof.* Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of the second sentence of section 27 of the act. Assignments of such interests must be filed for record purposes in the appropriate land offices in accordance with the applicable provisions of section 192.141. All assignments of royalty interests must be filed for the record, but those of 1 percent or less will be approved only upon specific request and then only after discovery. Any assignment of 1 percent or less if filed for the record will be deemed to be valid whether formally approved or not.

[Circ. 1794 July 23, 1951]

TERMINATION OF LEASES

§ 192.160 *Relinquishments of leases or portions thereof.* A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

[Circ. 1624, Oct. 28, 1946]

§ 192.161 *Cancellation of lease.* Any lease not known to contain valuable deposits of oil or gas may be canceled by the Secretary of the Interior, after giving notice in accordance with section 31 of the act, whenever the lessee fails to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, if such default continues for the period prescribed in that section after service of notice thereof. Leases known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

[Circ. 1624, Oct. 28, 1946]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1841]

PART 79—TIMBER

FREE USE OF TIMBER ON PUBLIC LANDS IN ALASKA

The following text is substituted for §§ 79.1–79.13a:

FREE USE OF TIMBER ON PUBLIC LANDS IN ALASKA

Sec.
79.1 Statutory authority.
79.2 Free use privilege; cutting by agent.
79.3 Free use of timber for Government purposes.
79.4 Application for permit.
79.5 Issuance and cancellation of permit, removal of timber; bond.
79.6 Cutting rules; restriction on cutting timber along highways or public roads, or bordering the shores of lakes.
79.7 Amount of timber which may be cut.
79.8 Notice of completion of timber cutting operations.
79.9 Timber on school sections and on withdrawn lands.
79.10 Termination of permit; extensions.
79.11 Trespass; penalty for unauthorized cutting of timber.
79.12 Appeals.

AUTHORITY: §§ 79.1 to 79.12 issued under sec. 11, 30 Stat. 414, as amended; 48 U. S. C. 423.

CROSS REFERENCE: For additional free use privileges, see §§ 259.21—259.25 of this chapter.

§ 79.1 *Statutory authority.* Section 11 of the act of May 14, 1898 (30 Stat. 414; 48 U. S. C. 423), empowers the Secretary of the Interior to permit the use of timber found upon the public lands in Alaska by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes as may actually be needed by such persons for such purposes. This section was amended by the Act of June 15, 1938 (52 Stat. 699), so as to permit the use of such timber by churches, hospitals, and charitable institutions for firewood, fencing, buildings, and for other domestic purposes.

§ 79.2 *Free use privilege; cutting by agent.* (a) Except as provided in § 79.9, the only timber which may be cut under §§ 79.1 to 79.12 for free use in Alaska is timber on vacant public lands in the Territory not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant under this section after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have the right to cut the timber while the permit remains in force as against a subsequent applicant who may wish to obtain the same timber by purchase, except as provided in § 79.22.

(b) Free use permits will not be issued where the applicant owns or controls lands having an adequate supply of timber to meet his needs.

§ 79.3 *Free use of timber for Government purposes.* Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized Government purposes may procure it from the vacant and unreserved public lands in Alaska free of charge, provided the contracts do not include any charge for the value of the firewood or timber. Where it is desired to procure timber for such use, an application for permit in duplicate on Form 4–056 must be filed, as in other cases, and a copy of the contract must be attached to the application.

§ 79.4 *Application for permit.* Before timber is cut for free use, an application for permit in duplicate on Form 4–056 must be filed in an office or with an employee of the Bureau of Land Management in Alaska.

§ 79.5 *Issuance and cancellation of permit; removal of timber; bond.* (a) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of Form 4–056 shall be returned to the applicant showing the approval or rejection of such application.

(b) The signing officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations in §§ 79.1 to 79.12, or if the permit has been issued erroneously.

(c) No timber shall be removed until the permit is issued. If deemed necessary by the signing officer, a bond, satisfactory to him, may be required as a guarantee of faithful performance of the provisions of the permit and the regulations in §§ 79.1 to 79.12.

§ 79.6 *Cutting rules; restriction on cutting timber along highways or public roads, or bordering the shores of lakes.* All free-use timber shall be cut and removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources. In the free-use disposal of timber, the cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production. Moreover, no green timber shall be cut within 300 feet of either side of the center line of a highway or public road, or bordering streams or the shores of lakes designated for recreational use unless specifically authorized by the Regional Administrator or the Regional

Chief, Division of Forestry, to prevent or control fungus infection or insect attacks, or for other reasons found sufficient to justify such cutting.

§ 79.7 *Amount of timber which may be cut.* During each calendar year each applicant entitled to the benefits of section 11 of the act of May 14, 1898, may take a total of 100,000 feet board measure or 200 cords in saw logs, piling, cordwood, or other timber. This amount may be taken in whole in any one of such classes of timber or in part of one kind and in part of another kind or other kinds. Where a cord is the unit of measure, it shall be estimated in relation with saw timber in the ratio of 500 feet board measure to the cord. Permits to take timber in excess of the amount stated may be granted to churches, hospitals, and charitable institutions upon a showing of special necessity therefor, and with the approval of the Regional Administrator.

§ 79.8 *Notice of completion of timber cutting operations.* Upon completion of the cutting and the removal of the timber, the permittee must notify the Regional Chief, Division of Forestry, or other forest officer, stating when the work was completed, the land from which the timber was taken, the amount and kind of timber which was cut and removed, and the use to which the timber was put.

§ 79.9 *Timber on school sections and on withdrawn lands.* Sections 79.1 to 79.12 are not applicable to timber upon sections 16, 33, and 36, which were reserved to the Territory for educational uses by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353, 354). Sections 79.1 to 79.12 are also inapplicable to timber upon withdrawn areas, unless the order of withdrawal permits.

§ 79.10 *Termination of permit; extensions.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer.

§ 79.11 *Trespass; penalty for unauthorized cutting of timber.* The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 79.1 to 79.12, will render the persons responsible liable to the United States in a civil action for trespass, and such persons may be prosecuted criminally under 18 U. S. C. 1852 or section 56-1-26 and 56-1-27 of the Alaska Compiled Laws, Annotated, 1949.

§ 79.12 *Appeals.* A party aggrieved by any action involving his application may appeal to the Director of the Bureau of Land Management and the Secretary of the Interior, pursuant to the Rules of Practice contained in Part 221 of this chapter.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

JOEL D. WOLFSOHN,
Assistant Secretary of the Interior.

FEBRUARY 11, 1953.

[F. R. Doc. 53-1526; Filed, Feb. 16, 1953; 8:45 a. m.]

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See Circ. 1822, 1825, 1834, 1844
1847, 1864 & 1866

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular 1842]

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

SUBPART A—GENERAL REGULATIONS APPLICABLE TO ALL RIGHTS-OF-WAY PROVIDED FOR IN THIS PART

TERMS AND CONDITIONS

244.9(m) amended by Circ 1876

Replaced by Circular 1915 (11/58)

Section 244.9 (m) is amended to read:

§ 244.9 *Terms and conditions.* * * *

(m) That there are reserved rights-of-way for reservoirs, dams, and other similar or related works which may thereafter be constructed for the development of hydroelectric power or irrigation, or for any other purposes, or combination of purposes, under authority of the United States, and that the use of the right-of-way for the purpose authorized shall on order of the Secretary be discontinued without liability or expense to the United States, to the extent found by him to be in conflict with such reserve rights-of-way.

(R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

FEBRUARY 21, 1953.

[F. R. Doc. 53-1864; Filed, Feb. 27, 1953; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1843

Part 232—Desert-Land Entries

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232.3 Land that may be entered as desert land.
232.4 Who may make desert-land entry.
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232.63 Contests.
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AUTHORITY: §§ 232.1 to 232.64 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 232.1 to 232.64 contained in Circular 474, Dec. 18, 1928, except as noted following sections affected. For changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For amendment to entries affecting desert lands, see §§ 104.11–104.14 of this chapter. For Carey Act grants, see Part 272 of this chapter. For desert-land entries within a reclamation project, see §§ 230.113–230.125 of this chapter. For Flathead irrigation project, Montana, see Part 233 of this chapter. For general orders of withdrawal see §§ 297.11, 297.12 of this chapter. For general regulations relating to applications and entries, see Part 101 of this chapter. For land classifications, see Part 296 of this chapter. For reclamation of arid lands by the United States, see Part 230 of this chapter. For reclamation of arid lands in Nevada, see Part 234 of this chapter. For State irrigation districts, see Part 231 of this chapter. For swamp land grants, see Part 271 of this chapter.

Reprint March 13, 1953, of Circular No. 474, December 18, 1928, as amended by Circular No. 1474, July 8, 1940, Circular No. 1535, May 26, 1943, Circular 1689, December 28, 1948, and Circular No. 1808, January 5, 1952.

GENERAL STATEMENT

§ 232.1 *Purpose of statutes.* (a) It is the purpose of the statutes governing desert land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

(b) Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply; more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

ENTRY

§ 232.2 *States in which desert-land entry may be made.* The act of March 3, 1877 (19 Stat. 377; 43 U. S. C. 321–323), as amended by the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 321, 323, 325, 327–329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 232.3 *Land that may be entered as desert land.* (a) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, nonmineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Part 102 of this chapter), nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L. D. 522 and 42 L. D. 524.)

(b) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with §§ 102.34 to 102.38 of this chapter. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

§ 232.4 *Who may make desert-land entry.* (a) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 232.10 and 232.11 can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(b) The citizenship of a married woman must be shown, as required by § 137.4 of this chapter.

(c) At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

§ 232.5 *Quantity of lands that may be entered.* (a) Under the act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the act of March 3, 1891, the maximum area that may be embraced in a desert entry was reduced to 320 acres. This limitation must, however, be read in connection with the act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 212), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws, and the amendment thereof by the act of February 27, 1917 (39 Stat. 946; 43 U. S. C. 330), allowing one who has entered 320 acres under the enlarged homestead laws to make a desert-land entry. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, or 320 acres under the Enlarged Homestead Act, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, may, if otherwise qualified, enter 160 acres of land under the desert-land laws. In other words, he may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres. It is to be noted also that the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area, and that a like restriction is made by the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), as supplemented by the act of March 4, 1933 (47 Stat. 1570; 30 U. S. C. 124) with reference to desert-land entries made for land withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable for those deposits.

(b) Entry of lands within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), is limited to 160 acres.

§ 232.6 *Second entry.* (a) A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except, however, that under the act of September 5, 1914 (38 Stat. 712; 43 U. S. C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted thereafter to make another entry or to take one or any part thereof by assignment. Applications to make second entry must not be allowed by the managers, but must be forwarded by them, with appropriate recommendations, to the regional administrator, in accordance with § 232.7, accompanied by the applicant's statement giving data from which his former application, or applications, entry, or entries may be identified (preferably its series and number, as well as a description of the tract by section, township, and range), and showing (1) what examination of the land and what inquiries as to its character he made prior to filing his previous application or applications for entry, and what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation; (2) what improvements he made upon the land, describing in detail their nature and cost, the date of his abandonment of the claim or claims and the reason therefor, and whether he ever executed a relinquishment of the entry or entries; and (3) what consideration, if any, he received for abandoning or relinquishing the entry or entries, and whether he sold the improvements thereon, giving full details as to such sale, if any, including the date thereof and the consideration received. This statement must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts; or, there may be several witnesses, each testifying on some material point.

(b) If the regional administrator should find that the applicant is qualified to make a second entry, the application will be returned to the manager for appropriate action in accordance with § 232.15.

§ 232.7 *Report on application for second desert-land entry.* An application for desert-land entry, accompanied by a showing for second entry on Form 4–007c, will be transmitted by the manager to the regional administrator for preliminary consideration. If upon examination of the application and second entry showing it appears that a field examination as to the applicant's qualifications to make second desert-land entry should be made, such examination will be directed.

[Circ. 1474, 5 F. R. 2600]

§ 232.8 *Land entered must be in compact form.* Land entered under the desert land laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable, on account of the previous appropriation of adjoining lands or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered and the surrounding tracts should be stated, in order that the manager may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the manager to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point.

§ 232.9 *Entries restricted to surveyed lands since March 28, 1908; claims on unsurveyed lands.* (a) Prior to the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the district land office.[1]

(b) To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant.

§ 232.10 *Application for desert-land entry*[2] (a) A person who desires to make entry under the desert-land laws must file with the manager of the proper land office an application, in duplicate, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086; 43 U. S. C. 323, 325). He also must state that he has not previously exercised the right of entry under the desert-land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within 4 years from the date of his application. The application must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable therefor, the applicant also must state in his application that the same is made in accordance with and subject to the act of June 22, 1910 (36 Stat. 583; 30 U. S. C. 83–85), or the act of July 17, 1914 (38 Stat. 509; 30 U. S. C. 121–123), as the case may be.

(b) The application will be considered as a petition for the classification of the land as provided in Part 296 of this chapter.

[Circ. 1474, 5 F. R. 2600]

§ 232.11 *Showing required in application as to character of land.* (a) Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The showing, which is made a part of the application, may not be made by an agent or upon information and belief, and the manager must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the statements of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

(b) The statements in the blank form of declaration and accompanying statements as to present character of the land may be modified so as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, sodium, sulphur, oil, gas, and asphaltic minerals in case application is made under the provisions of the act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor.

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[1] Unsurveyed public land withdrawn by Executive orders Nos. 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. See Part 296 and §§ 297.11 and 297.12 of this chapter.

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 232.12 *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them. The manager will be careful to note the post-office address on his records.

§ 232.13 *Execution of applications and proofs; time for filing of applications.* (a) Applications and proofs, except final proofs required by R. S. 2294 43 U. S. C. 254 must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 210.1.

(b) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the district land office.

§ 232.14 *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected.

§ 232.15 *Plan of irrigation and payment; reports.* (a) At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i. e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands.

(b) With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and the position and direction of the proposed permanent main and lateral ditches on the land, and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the act of March 3, 1877, as amended by section 2 of the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 327), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The manager will carefully examine the evidence submitted in such applications, and either reject defective applications or require additional evidence to be filed.

(c) At the time of filing his application, plans, and the statements submitted therewith the applicant must pay the manager the sum of 25 cents per acre for the lands therein described, the application to be given its proper serial number at that time. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered. The manager will issue a receipt for the money, and, after proper notations have been made on the records of the district land office, will transmit the originals of all of the papers to the regional administrator for preliminary consideration, together with report in duplicate, as to any conflicts of record.

(d) The regional administrator will cause a field examination to be made, if necessary, as to the sufficiency of the alleged water supply and the feasibility of the proposed plans.

[Circ. 1474, 5 F. R. 2600]

ASSIGNMENT

§ 232.16 *Lands which may be assigned.* While by the act of March 3 1891 (26 Stat. 1096; 43 U. S. C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

CROSS REFERENCE: For assignment of desert-land entries within Government reclamation projects, see § 230.121 of this chapter.

§ 232.17 *Qualifications of assignees.* (a) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under the act of September 5, 1914, to make a second entry, he can not take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second entry. The right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking one by assignment, unless such entry be subsequently lost, forfeited, or abandoned because of matters beyond the claimant's control.

(b) A person who has the right to make a second desert-land entry under the act of September 5, 1914, may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned. The right to make a second desert-land entry, however, is not possessed by any person who has assigned some former entry or part thereof.

(c) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

§ 232.18 *Showing required of assignees; recognition of assignments.* (a) As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(b) An assignee must file with his deed of assignment a statement (Form 4-274c), showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with Part 137 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by Part 137 of this chapter. In short, the assignee must prove that he possesses all the qualifications necessary to enable him to make a desert-land entry for the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D. 541, 33 L. D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L. D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgements of deeds. The assignee must furnish a statement on Form 427c as to his qualifications.

(c) No assignments of desert-land entries or parts of entries are conclusive until examined in the district land office and found satisfactory and the assignment recognized. When recognized however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L. D. 90 and 48 L. D. 519.

SALE, TAXATION, AND MORTGAGE

§ 232.19 *When lands may be sold, taxed, or mortgaged.* (a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621–630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the act of June 13, 1930 (46 Stat. 581; 43 U. S. C. 455, 455a–455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper district land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

ANNUAL PROOF

§ 232.20 *Showing required.* (a) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the act of March 3, 1891 (26 Stat. 1096; 43 U. S. C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(b) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

§ 232.21 *Acceptable expenditures.* (a) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(b) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L. D. 106.)

§ 232.22 *Expenditures not acceptable.* (a) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L. D. 601 and 42 L. D. 523.)

(b) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land, will not be accepted.

(c) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

§ 232.23 *Action by manager.* Managers are instructed to examine carefully all annual proofs filed and are authorized to suspend them, with notice to claimants to cure defects within 30 days, or to reject them, subject to the usual right of appeal to the Director of the Bureau of Land Management. However, no annual proof which alleges an expenditure for stock or interest in an irrigation company should be rejected merely because the expenditure was of that character unless such rejection be warranted under instructions issued by the Director of the Bureau of Land Management in acting upon the report on the particular company in question. If no such instructions have been issued, and the company referred to in the annual proof be one on which the manager has not previously requested a report from the proper regional administrator, the manager will immediately call for such report and advise the director thereof. The manager will endorse the fact and date of the call upon the margin of the annual proof.

§ 232.24 *Procedure where proof is not made when due.* Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

§ 232.25 *Extensions of time.*[3] The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L. D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

§ 232.26 *Submission of proof before due dates.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

FINAL PROOF

§ 232.27 *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

§ 232.28 *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

§ 232.29 *Publication of final-proof notice.* The manager will report promptly to the regional administrator the receipt of a notice of intention to make desert-land proof and withhold the issuance of notice for publication until the mineral or nonmineral character of the land has been determined and he has been instructed as to further action which should be taken. When instructed to do so, the manager will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L. D. 131; 43 L. D. 216), and must also be posted in a conspicuous place in the district land office for the same period of time. The claimant must pay the cost of the publication, but it is the duty of managers to procure the publication of proper final-proof notices, and managers should accordingly exercise the utmost care in that behalf. (40 L. D. 459.) The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by some one authorized to act for him. The manager will certify to the posting of the notice in the district land office.

[Circ. 474, Dec. 18, 1928, as amended by Circ. 1547, 8 F. R. 7508]

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[3] Extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U. S. C. 256a), July 26, 1935 (49 Stat. 504; 43 U. S. C., 256a), and June 16, 1937 (50 Stat. 303; 43 U. S. C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter. The regulations were issued as Circs. 1311, 1365, and 1432, respectively.

§ 232.30 *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 210.1 of this chapter.

§ 232.31 *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

§ 232.32 *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B Cole, 38 L. D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L. D. 269.)

§ 232.33 *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of gass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L. D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

§ 232.34 *Showing as to water right.* (a) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(b) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L. D. 305.)

(c) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, his actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(d) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

§ 232.35 *Showing where water supply is derived from irrigation project.* (a) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof or subsequently, such evidence as he can tending to support his contentions.

(b) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the regional administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the manager will reject the proof, subject to the usual right of appeal. If application for hearing be filed, the manager will transmit one copy thereof to the regional administrator.

[Circ. 474, Dec. 18, 1928, as amended by Circ. 1535, 8 F. R. 7284]

§ 232.36 *Final-proof expiration notice.* (a) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the manager should send the claimant a notice, addressed to him at his post-office address of record, informing him that he will be allowed 90 days in which to submit final proof; or if the death of the claimant of record be suggested, such notice should also be addressed to the claimant at the post office nearest the land. (44 L. D. 364.)

(b) Should no action be taken within the time allowed, the entry will be canceled. The notice provided for in this section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

§ 232.37 *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L. D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township. If submitted, the final proof will be received by the manager, who will pursue the same course in regard thereto that would have been pursued in the absence of the suspension. Should final certificate be issued on any proof, it will describe the entered land in terms of the original survey with reference to the plat of such survey and to the fact of a pending resurvey, as follows:

> In accordance with official plat of survey approved ______; resurvey now pending under Group No. ______ B. L. M.; authorization dated _________.

CROSS REFERENCE: For resurveys, see Part 281 of this chapter.

EXTENSIONS OF TIME FOR FINAL PROOFS; ACTS OF MARCH 28, 1908, APRIL 30, 1912, AND FEBRUARY 25, 1925

§ 232.38 *General acts authorizing extensions of time.*[4] There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U. S. C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U. S. C. 333); April 30, 1912 (37 Stat. 106; 43 U. S. C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U. S. C. 335); and February 25, 1925 (43 Stat. 982; 43 U. S. C. 336). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said act of June 27, 1906, see §§ 230.113 to 230.119 of this chapter. The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts.

CROSS REFERENCE: For regulations under the act of March 4, 1915, see §§ 232.41 to 232.43.

§ 232.39 *When extensions of time may be granted.* (a) Under the provisions of the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 333), the period of 4 years may be extended, in the discretion of the regional administrator, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. The regional administrator is authorized to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding 3 years, but applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L. D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

(b) Under the provisions of the act of April 30, 1912 (37 Stat. 106; 43 U. S. C. 334), the regional administrator may, in his discretion, in addition to the extension authorized by previous legislation, grant to any entryman under the desert land laws a further extension of time for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension cannot be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

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[4] In addition to the acts cited in this section, extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U. S. C. 256a), July 26, 1935 (49 Stat. 504; 43 U. S. C. 256a), and June 16, 1937 (50 Stat. 303; 43 U. S. C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter. The regulations were issued as Circs. Nos. 1311, 1365, and 1432, respectively.

(c) An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts; and the manager, after carefully considering all of the facts, will forward the application to the proper regional administrator, with appropriate recommendation.

(d) The manager is required to suspend any application for extension of time if he considers the showing defective in form or substance, allowing the applicant a reasonable time to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, and advising the applicant that upon his failure to take any action within the time specified appropriate recommendations will be made. After the expiration of the time thus granted the original application and the amended statements or exceptions, as the case may be, together with proper report and recommendations of the manager, will be transmitted to the regional administrator.

(e) Applications for further extension of time under the act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U. S. C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 335), as amended.

§ 232.40 *Procedure on applications for extensions of time, where contest is pending.* (a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L. D. 603.)

(b) Consideration by the regional administrator of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

RELIEF; ACT OF MARCH 4, 1915

§ 232.41 *General statement.* The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the act of March 21, 1918 (40 Stat. 458; 43 U. S. C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms.

§ 232.42 *Applications for relief.* (a) All applications for the benefits of section 5 of the act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered land is situated, to be referred to the proper regional administrator, with appropriate recommendation. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

(b) All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

§ 232.43 *Conditions for extensions of time.* (a) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, the following conditions must exist: (1) The entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established, some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(b) The existence of the conditions set forth in paragraph (a) (1) and (2) of this section, can be determined by examination of the records of the Bureau of Land Management, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land, but not used as the basis of annual proof.

(c) The existence of the conditions enumerated in paragraph (a) (3), (4), and (5) of this section, must be established in all cases by the statements filed in support of the application for relief.

(d) With regard to the condition set forth in paragraph (a) (3) of this section, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

(e) If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made, and favorable action on such report has been taken, the existence of the condition in paragraph (a) (3) of this section will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

(f) If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

(g) The condition set forth in paragraph (a) (4) of this section will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

(h) The extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4 1915 as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17, 1902 (32 Stat 388) and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906 (34 Stat. 520; 43 U. S. C. 448).

(i) No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law.

§ 232.44 *Relief by homestead proof, or purchase.* The last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337, 338), are designed to afford relief in cases of the kind last mentioned in the preceding section The regional administrator is authorized, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however. but remains a desert-land entry, subject to a new kind of proof.

§ 232.45 *Conditions authorizing homestead proof and purchase.* (a) To entitle a claimant to relief under either of the last two paragraphs of section 5 of the act of March 4, 1915, as amended, it must be made to appear to the satisfaction of the regional administrator: (1) That the entry in question is a lawful pending entry, made prior to March 4, 1915; (2), where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (3), that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and (4) that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof.

(b) The conditions of paragraph (a) (1) and (2) of this section can be determined from the records of the Bureau of Land Management.

(c) With regard to the condition of paragraph (a) (3) of this section, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

(d) With regard to the condition of paragraph (a) (4) of this section, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

§ 232.46 *Notice of allowance of relief; election to purchase.* When any application for relief under the second of the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the distri land office, an election to perfect t entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

§ 232.47 *Procedure for final proofs in relief cases.* In the submission and consideration of final proofs under the last two paragraphs of section 5 of the act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

§ 232.48 *No assignment allowed after relief has been granted.* After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the act March 4, 1915, as amended by the act March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases.

§ 232.49 *Entries perfected by compliance with homestead law.* (a) A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

(b) However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

(c) Failure to submit final proof within the 5-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event fin certificate may be issued and the ca referred to the Director, Bureau of Land Management, for confirmation.

Cross Reference: For the confirmation of entries, see Part 107 of this chapter.

(d) Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries.

§ 232.50 *Residence and improvements for homestead proof.* (a) If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

(b) Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123; 43 U. S. C. 164, 169, 218), or the "3-year homestead law."

(c) If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

(d) Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

(e) The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

CROSS REFERENCE: For residence and cultivation requirements under the homestead laws, see §§ 166.24 to 166.46 of this chapter.

§ 232.51 *Cultivation for homestead proof.* Cultivation of the land for at least 2 years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed.

§ 232.52 *Homestead proof on entries in Utah and Idaho.* If the entry is situated in the State of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth section of the act of February 19, 1909 (35 Stat. 639; 43 U. S. C. 218) as amended, or June 17, 1910 (36 Stat. 531; 43 U. S. C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years.

§ 232.53 *Heirs and devisees; reduction of cultivation.* (a) If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the said act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

(b) The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

(c) With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

§ 232.54 *Fees.* The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

§ 232.55 *Entries perfected by purchase.* If claimant elects to perfect his entry under the last paragraph of section 5 of the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the manager the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

§ 232.56 *Credit for improvements used as the basis for annual proof.* Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

§ 232.57 *Penalty for failure to make final proof and payment.* If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the act of March 4, 1915, as amended, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

§ 232.58 *Forms of proofs.* Final proofs under the second of the last three paragraphs of section 5 of the act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided.

RELIEF; ACT OF FEBRUARY 14, 1934

§ 232.59 *Applications for relief; initial payment required.* (a) The act of February 14, 1934 (48 Stat. 349; 43 U. S. C. 339), entitled "An act to amend an act approved March 4, 1929 (45 Stat. 1548), entitled 'An act to supplement the last three pargaraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161), as amended by the act of March 21, 1918 (40 Stat. 458),'" grants relief to desert-land entrymen, as set forth in this section and § 232.60.

(b) This act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

(c) Desert-land entries made prior to March 4, 1915, and pending February 14, 1934, are entitled to the relief granted by the act of March 4, 1915, as amended, or by the provisions of this act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this act.

(d) In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the act of March 4, 1915, or under the provisions of said act of February 14, 1934.

(e) The showing as to the right to such relief must be the same as that required by § 232.42. Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated, and, after examination by the manager as to statement of facts required by § 232.42, and, where necessary opportunity has been given applicants to supply data to cure defects, referred to the regional administrator for instructions.

(f) When any application for relief under the provisions of this act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed 1 year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

(g) Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice.

[Circ. 1323, Apr. 24, 1934, as amended by Circ. 1535, 8 F. R. 7284]

§ 232.60 *Publication and proof; final payment required.* (a) To perfect title to the entry, under the act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

(b) Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said act, with the proviso "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

(c) These acts having been performed, and there being no protest, contest, or other objection, the manager will issue the final certificate and transmit it to the Bureau of Land Management with the regular returns.

(d) Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may, if they so desire, take advantage of the provisions of this act.

(e) Where relief has been granted in desert-land entries under the original act of 1929 and prior to February 14, 1934, date of passage of act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original act of 1929 have not been completed prior to the date of said amendatory act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2.

[Circ. 1323, Apr. 24, 1934]

§ 232.61 *Collection of purchase money and fees; issuance of final certificate.* (a) At the time of making final proof the claimant must pay to the manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915, as amended and supplemented. (See §§ 232.49 and 232.55.) The manager will issue a receipt for the money paid, and if the proof is satisfactory, he will issue final certificate.

(R. S. 2478; 43 U. S. C. 1201)

[Circular 1808 of January 10, 1952]

(b) If the entryman is dead and proof is made by anyone for the heirs, no w[illegible] being suggested in the record, the fin[illegible] certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the act of March 28, 1908 (35 Stat. 52; 43 U. S. C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the district land office the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries. The manager will then note these adjustments on his tract books and plats and transmit the statements to the Bureau of Land Management with separate reports of all conflicts which may have been developed. He will also report any case in which the claimant has failed, after due notice, to file the required statement of adjustment.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land, and upon receipt of the same the manager will issue final certificate which will be transmitted to the Bureau of Land Management with the regular returns.

§ 232.62 *Amounts to be paid.* No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (38 Stat. 1161; 43 U. S. C. 335, 337, 338), or February 14, 1934 (48 Stat. 349; 43 U. S. C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making final proof. Where final proofs are made before the manager in California. Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each

100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

CONTESTS AND RELINQUISHMENTS

§ 232.63 *Contests.* (a) Contests may be initialed by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases.

Cross Reference: For rules of practice governing contests and protests, see Part 221 of this chapter.

§ 232.64 *Relinquishments.* A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the district land office the entries will be canceled by the manager in the same manner as in homestead, preemption, and other cases under the first section of the act of May 14, 1880 (21 Stat. 140; 43 U. S. C. 202). Conditional relinquishments will not be accepted.

Cross Reference: For relinquishments, in general, see Part 105 of this chapter.

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See Circ. 1822, 1825, 1834, 1847, 1864 + 1866

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular 1844]

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

TERMS AND CONDITIONS

Paragraph (f) of § 244.9 is hereby amended to read as follows:

§ 244.9 *Terms and conditions.* * * *

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 9, 1953.

[F. R. Doc. 53-4285; Filed, May 14, 1953; 8:46 a. m.]

Published in 18 F.R. 2827 of May 15, 1953

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Replaced by 2239

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1845

Part 147—Exchanges by States, Under Taylor Grazing Act

EXCHANGES BY STATES UNDER TAYLOR GRAZING ACT, LANDS WITHIN OR WITHOUT GRAZING DISTRICTS

Sec.
147.1 Statutory authority.
147.2 Lands which may be offered in exchange.
147.3 Payment of fees not required.
147.4 Application for exchange; evidence required.
147.5 Action by manager.
147.6 Inquiry as to mineral character of selected land unnecessary in certain equal area exchanges.
147.7 Additional evidence required.
147.8 Deed of conveyance of base lands.
147.9 Abstract of title.
147.10 Taxes.
147.11 Publication and proof.
147.12 Action by Bureau of Land Management.
147.13 Granted lands unaffected by their inclusion within grazing districts.
7.14 No indemnity right accrues by the inclusion of school sections within grazing districts.
147.15 Acts and regulations governing applications pending on June 26, 1936.

PATENTS TO ISSUE TO THE STATE, SUBJECT TO PRIOR LEASES UNDER SECTION 15 OF THE TAYLOR GRAZING ACT

147.17 Statutory authority.
147.18 State may request that patent issue subject to grazing lease.
147.19 Action on conflicting application for section 15 lease or for renewal of such lease.
147.20 Rental payments collected by United States.

AUTHORITY: §§ 147.1 to 147.15 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

CROSS REFERENCES: For exchanges for migratory bird or other wildlife refuges, see Part 151 of this chapter. For exchanges for the benefit of particular States, see Part 152 of this chapter. For exchanges for the consolidation or extension of Indian reservations or Indian holdings, see Part 149 of this chapter. For exchanges of privately owned lands under the Taylor Grazing Act, see Part 146 of this chapter. For exchanges to eliminate private holdings from national parks and national monuments, see Part 150 of this chapter. For general orders of withdrawal, modification, see §§ 297.14, 297.17 of this hapter. For exchanges by the State of Cali- nia with individuals for State park system, §§ 270.38–270.41 of this chapter.

§ 147.1 *Statutory authority.* Subsections (c) and (d) of section 8 of the Taylor Grazing Act, approved June 28, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), authorize exchanges of lands between the United States and a State, upon the application of a State, and provide for the issuance of patent for the selected lands upon acceptance of title to the lands conveyed to the United States in exchange therefor.
[Circ. 1398, July 22, 1936]

§ 147.2 *Lands which may be offered in exchange.* (a) Lands offered in exchange by a State may be lands owned by the State within or without the boundary of a grazing district, and the selected lands may be surveyed grazing district lands not otherwise appropriated or reserved, or unappropriated and unreserved surveyed public lands of the United States, within the same State. If, however, the selected lands are within a grazing district, the lands offered by the State in exchange must be within the same grazing district and such selected lands must lie in a reasonably compact body so as not to interfere with the administration or value of the remaining lands in the district for grazing purposes.

(b) An application for exchange may be made on the basis of equal area or equal value. However, with respect to all exchange applications filed after June 20, 1946 the Secretary of the Interior will consider and determine the value of the offered and selected land and will not approve an exchange unless the values of the offered and selected land are approximately equal. In determining such values, consideration will be given to such matters as the actual appraised value of the lands, the benefits of consolidation or blocking out of land holdings by the State and the Federal Government as a result of the proposed exchange, the size of the areas involved, the value of the surface or other resources, including such reservations of minerals or easements as may be made by the State or the United States, and any other considerations which may have appropriate bearing on the value of the lands involved.

(c) When mineral lands are selected in an exchange based upon equal acreage, the patent will contain a reservation of all minerals to the United States, and in any exchanges based upon equal acreage, the State may offer mineral lands owned by the State, with a mineral reservation to the State.

(d) Unsurveyed school sections within or without the boundary of a grazing district may be offered by the State in an exchange based upon equal areas, but the Secretary of the Interior will consider and determine whether the values of the offered and selected lands are approximately equal for the purpose of the exchanges and no mineral reservations to the State may be made in such unsurveyed sections, the identification of which will be determined by protraction or otherwise, the State by such selections waiving all rights to the unsurveyed sections.

(e) State-owned lands, as well as school sections surveyed and unsurveyed the title to which has not yet vested in the State, located within national forests, national parks and monuments, Indian or other reservations or withdrawals, may be offered as a basis for an exchange under said section 8 of the Taylor Grazing Act as amended, where the selected lands are not within a grazing district. Where the selected lands are within a grazing district, lands within the exterior boundaries of the grazing district and also within such reservations or withdrawals may be offered as a basis for an exchange only if the Director, Bureau of Land Management, determines that the exchange would not interfere with the administration or value of the remaining lands in the grazing district for grazing purposes.
[Circ. 1645, 12 F. R. 2477, as amended by Circ. 1663, 12 F. R. 7334;

§ 147.3 *Payment of fees not required.* Payment of fees will not be required in the case of any exchange but the State will be required to pay one-half of the cost of the publishing notice of a proposed exchange.
[Circ. 1398, July 22, 1936]

Reprint, May 20, 1953, of Circular No. 1398, July 22, 1936, Circular No. 1438, October 13, 1937, Circular No. 1474, July 8, 1940, Circular No. 1533, April 21, 1943, Circular No. 1617, June 20, 1946, Circular No. 1645, April 7, 1947, Circular No. 1660, October 21, 1947, and Circular No. 1663, November 3, 1947.

§ 147.4 *Application for exchange; evidence required.*[1] (a) A State desiring to exchange lands under section 8 of the Taylor Grazing Act (43 Stat. 1272; 43 U. S. C. 315g) should file application, in triplicate, in the district land office having jurisdiction over the selected lands, or in the Bureau of Land Management when there is no district land office within the State. Such application should describe the lands offered to the Government as well as those selected in exchange, by legal subdivisions of the public land surveys, or by entire sections, and nothing less than a legal subdivision may be surrendered or selected.

(b) The application for exchange should identify the grazing district or districts in which the offered or selected lands are situated, if such lands lie within a grazing district, and should state whether the State desires the proposed exchange to be based upon equal value or equal acreage. In addition, the application should state whether or not any reservations of minerals, easements, or other rights of use in or to the offered lands are desired, and what use thereof is contemplated, whether the State consents to a reservation of minerals to the United States in the selected lands and what other reservations or easements which are to be made by the United States with respect to the selected lands are acceptable to the State. Each application for an exchange must be accompanied by the following certificate and statement:

(1) A certificate by the selecting agent showing that the selection is made under and pursuant to the laws of the State; that the lands selected and the lands relinquished are approximately of equal value, (unless the exchange is proposed to be based on equal areas;) that the State is the owner of the lands offered in exchange, if such is the case; that the offered lands are not the basis of another selection or exchange, and that the selected lands are unappropriated and are not occupied, claimed, improved, or cultivated by any person adversely to the State.

(2) A corroborated statement relative to springs and water holes on the selected lands in accordance with the regulations in §§ 292.1 to 292.9, inclusive, of this chapter.

[Circ. 1645, 12 F. R. 2478]

§ 147.5 *Action by manager.* (a) If the application for exchange appears regular and in conformity with the law and the regulations, the manager will assign a serial number thereto, and after appropriate notations have been made upon the records of the district land office, will transmit a duplicate of the application to the regional administrator for consideration together with a report, in duplicate, as to any conflicts of record.

(b) The lands included in the application will be segregated upon the records of the district land office and Bureau of Land Management, and will not be subject to other appropriation, application, selection, or filing.

[Circ. 1474, 5 F. R. 2598]

§ 147.6 *Inquiry as to mineral character of selected land unnecessary in certain equal area exchanges.* Where a State exchange application is based upon equal areas and the State elects to receive title to the selected lands with a reservation of all minerals to the United States, it will not be necessary to make any inquiry as to the mineral or nonmineral character of the selected lands but, all else being regular, a patent may be issued to the State for such lands with a reservation of all minerals to the United States; *Provided,* That the State files in addition to the evidence required by the governing regulations a statement that no part of such land is claimed, occupied or being worked under the mining laws.

[Instr. Sept. 3, 1936, as amended by Circ. 1645, 12 F. R. 2478]

§ 147.7 *Additional evidence required.* After considering the application and any evidence relative thereto as he may deem necessary, the Director of the Bureau of Land Management, unless he has reason to do otherwise, will issue notice for publication of the contemplated exchange, and will require the State, through the manager of the district land office, to submit proof of publication of notice, a duly recorded deed of conveyance of the offered lands (unless such offered lands are not owned by the State), a certificate of the proper State officer showing that the offered lands have not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county, or by an abstractor or abstract company satisfactory to the Department of the Interior, that no instrument purporting to convey or in any way encumber title to the offered land is of record or on file in his office. Where reservations of any kind are made in the offered lands, complete description thereof should be furnished. If, however, the offered lands were ever held in private ownership and were acquired by the State from s[illegible] source, it will be necessary for the S[illegible] to furnish an acceptable policy of t[illegible] insurance or an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the State making the conveyance, a certificate that the lands so conveyed were free from judgments or mortgages, liens, pending suits, tax assessments or other encumbrances, except such reservations as may be made in the lands conveyed, and a certificate by the proper official of the county in which the lands conveyed are situated showing that all taxes levied or assessed against the lands conveyed to the United States, or that could operate thereon as a lien, have been fully paid or that no taxes have ben levied, or whether there is a tax due on such lands that could operate as a lien thereon but which tax is not yet payable, and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States.

[Circ. 1398, July 22, 1936, as amended by Circ. 1533, 8 F. R. 7283, Dept. Order 2471, 13 F. R. 5493, Circ. 1645, 12 F. R. 2478]

§ 147.8 *Deed of conveyance of base lands.* The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State making [illegible] exchange, and must be accompanied [illegible] a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended."

[Circ. 1398, July 22, 1936, as amended by Circ. 1645, 12 F. R. 2478]

§ 147.9 *Abstract of title.* The abstract of title when required must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the office of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the offices of the clerks of courts of record affecting in any manner whatsoever the title to the land to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authentica[illegible] by an abstracter or by an abstract company, approved by the Bureau of Land Management, in accordance with § 211.1 [illegible] this chapter.

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[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[Circ. 1398, July 22, 1936, as amended by Circ. 1645, 12 F. R. 2478]

§ 147.10 *Taxes.* In case the land conveyed to the United States has been held in private ownership and taxes have been assessed or levied thereon, and such taxes are not due and payable until some future date, the State, in addition to the certificate above required relative to taxes and tax assessments, may furnish a bond with qualified corporate surety for the sum of twice the amount of taxes paid on the land for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the State may submit a sum similar to that required in the bond, and if and when proper evidence is furnished showing the taxes on the land conveyed have been paid in full, the said sum will be returned to the State.

[Circ. 1398, July 22, 1936, as amended by Circ. 1645, 12 F. R. 2478]

§ 147.11 *Publication and proof.* (a) The publication notice must give the name of the State making application, the serial number and date of the application, act under which application is filed, describe both the offered and selected lands (except that where the offered lands are unsurveyed no notice of such lands will be required) in terms of legal subdivisions of the public land surveys, and state that the purpose of the notice is to allow all persons claiming the selected lands or having bona fide objections to such exchange an opportunity to file their protests or other objections in the district land office, or in the Bureau of Land Management, together with evidence that a copy of such protest or objection has been served upon the State. Such notice must be published once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which may be situated the lands offered to the United States, and in the same manner in some like newspaper published in any county in which may be situated any lands to be selected in exchange. In the event of the designation of a daily newspaper, the publication should be made in the Wednesday issue thereof. A similar notice will be posted in the district land office during the required period of publication. Such notice for publication will be sent by the Bureau of Land Management to the manager for forwarding by him to the applicant with instructions for publication in the newspaper or newspapers designated, but where there is no district land office in the State applying for the exchange, the notice will be sent direct to the State [illegible] instructions for publication in the newspaper designated. Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published. The manager shall transmit such evidence of publication to the Bureau of Land Management with his report as to whether or not protests or contests have been filed against the proposed exchange, and shall certify as to the posting of notice in his office.

(b) The State will be responsible for payment of one half the cost of publication, and the publisher should bill the Director of the Bureau of Land Management for the other half in accordance with instructions contained in the advertising order accompanying the notice for publication.

[Circ. 1398, July 22, 1936, as amended by Circ. 1645, 12 F. R. 2478]

§ 147.12 *Action by Bureau of Land Management.* (a) The publication of notice, conveyance, abstract of title and other evidence required of the State will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the offered land and patent will issue for the land selected in exchange.

(b) Should information available to the Bureau of Land Management disclose inequalities of value, the Director of the Bureau of Land Management will advise the State and afford it opportunity for adjustment so as to bring the exchange within the provisions of the law.

(c) In case an exchange is authorized upon an equal acreage basis, should available information show that the selected lands are mineral in character, the State will be required to file its consent to the reservation to the United States of all minerals in such lands. In such exchanges, when the offered lands are mineral in character and the State holds title thereto the State may, if desired, reserve the mineral rights in such offered lands in accordance with the provisions of paragraph 2 of subsection (c) of section 8 of the Taylor Grazing Act, as amended.

(d) Notices of additional requirements, rejection or other adverse action will be given, and the right of appeal, review, or rehearing recognized in the manner prescribed by the Rules of Practice, Part 221 of this chapter. Protests against exchanges should be filed in the district land office, from where they will be transmitted to the Bureau of Land Management for consideration and disposal.

(e) Should the application for exchange be finally rejected or the selection canceled for any reason, any abstract of title filed will be returned to the State, and the State will be advised of its right to apply for a quitclaim deed under existing law for the land conveyed to the United States.

[Circ. 1398, July 22, 1936, as amended by Circ. 1617, 11 F. R. 7434, Circ. 1645, 12 F. R. 2478]

§ 147.13 *Granted lands unaffected by their inclusion within grazing districts.* The words in section 1 of the Taylor Grazing Act "Nothing in this act shall be construed in any way * * * to affect any land heretofore or hereafter surveyed which, except for the provisions of this act, would be a part of any grant to any State" were obviously intended to preserve school sections, both surveyed and unsurveyed, included within the boundaries of a grazing district established under the provisions of of the Taylor Grazing Act, in exactly the same status for the purpose of any grant to any State as the lands would have had had the Taylor Grazing Act not been passed and had the lands not been included in the grazing district.

[Circ. 1398, July 22, 1936, as amended by Circ. 1645, 12 F. R. 2478]

CROSS REFERENCE: For State grants for educational purposes, see Part 270 of this chapter.

§ 147.14 *No indemnity right accrues by the inclusion of school sections within grazing districts.* (a) A grazing district is not a reservation within the meaning of the act of February 28 1891 (26 Stat. 796; 43 U. S. C. 851 852), and therefore school sections, surveyed or unsurveyed, within a grazing district are not for that reason only valid base for indemnity school land selections under said act of 1891. The inclusion of unsurveyed school sections within a grazing district will not prevent the title to such lands from vesting in the State upon the acceptance of the plat of survey thereof by the Director of the Bureau of Land Management.

(b) Granted school sections owned by a State within or without the boundaries of a grazing district may be assigned by the State as a basis for an equal value, or equal area exchange, and unsurveyed school sections within or without the boundaries of a grazing district may be assigned by the State as a basis for an equal area exchange.

[Circ. 1645, 12 F. R. 2478]

§ 147.15 *Acts and regulations governing applications pending on June 26, 1936.* State applications for exchange pending at the date of the approval of the act of June 26, 1936, will be governed by the provisions of the act of June 28, 1934, as amended by the act of 1936, and the regulations in §§ 147.1–147.14.

[Circ. 1398, July 22, 1936, as amended by Circ. 1645, 12 F. R. 2478]

PATENTS TO ISSUE TO THE STATE, SUBJECT TO PRIOR LEASES UNDER SECTION 15 OF THE TAYLOR GRAZING ACT

AUTHORITY: §§ 147.17 to 147.20 issued under R. S. 2478, 43 U. S. C. 1201.

§ 147.17. *Statutory authority.* The act approved August 24, 1937 (50 Stat. 748; 43 U. S. C. 315p), provides that the Secretary of the Interior in adjudicating State exchanges, under section 8 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U. S. C. 315g), involving lands embraced in outstanding leases under section 15 of said act (48 Stat. 1275, 49 Stat. 1978; 43 U. S. C, 315m) issued prior to the filing of the State exchange application, upon the request of any State may issue patent to the State, subject to such outstanding lease: *Provided,* That the United States shall not by reason of the issuance of any such patents be required to account to the State for any money due and collected prior thereto as rent for any part of the then-current annual rental period, except as provided by law.
[Circ. 1438, Oct. 13, 1937]

§ 147.18 *State may request that patent issue subject to grazing lease.* Where a State application for exchange under the provisions of the Taylor Grazing Act aproved June 28, 1934 (48 Stat. 1269) as amended by the act of June 26, 1936 (49 Stat. 1976), is found to embrace lands included in an outstanding lease issued under section 15 of said act, before final action is taken by the Bureau of Land Management with a view to the issuance of patent on such application, the State will be afforded an opportunity to request the issuance of patent for the land involved subject to such outstanding lease, and upon receipt of such a request by the State, further action will be taken with a view to the issuance of patent, should no objection appear of record.
[Circ. 1438, Oct. 13, 1937]

CROSS REFERENCE: For patents, see Part 106 of this chapter.

§ 147.19 *Action on conflicting application for section 15 lease or for renewal of such lease.* Where an application for a lease or for the renewal thereof, under section 15 of the Taylor Grazing Act, conflicts with a pending application for a State exchange under section 8 of said act, the Bureau of Land Management may issue a lease or renewal lease for the lands in conflict, which lease shall provide for its termination as to the lands in conflict on the date when the pending conflicting State exchange application is approved for patenting.
[Circ. 1660, 12 F. R. 7006]

§ 147.20 *Rental payments collected by United States.* In accordance with the proviso to the act of August 24, 1937, in cases where the United States has, prior to the issuance of such a patent, received payments for an unexpired portion of the then current annual rental period, no payment other than that provided for by section 10 of the Taylor Grazing Act, as amended (49 Stat. 1978; 43 U. S. C. 315i), will be required to be made to the State by the United States.
[Circ. 1438, Oct. 13, 1937]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1846]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

SALE OF TIMBER ON O. & C. LANDS; PUBLICATION AND POSTING

Paragraph (a) of § 115.42 is amended to read as follows:

§ 115.42 *Publication and posting.* (a) In addition to the advertisement described in section 115.41, notice of any proposed competitive sale must be published prior to the time of such sale at the expense of the Government. The notice of sale of timber on Revested and Reconveyed lands shall be published on the same day weekly for at least two consecutive weeks in a newspaper published within the marketing area in which the timber is located (as established by the Secretary of the Interior). In the case of salvage sales of windthrown, insect damaged or fire killed timber, the notice shall be so published only once and the sale shall be held not less than one week after such publication.

(Sec. 5, 50 Stat. 875)

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 8, 1953.

[F. R. Doc. 53–4231; Filed, May 13, 1953; 8:47 a. m.]

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See Circ 1822, 1825,
1834, 1842, 1844
1864 + 1866

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

(Circular 1847)

PART 244—RIGHTS-OF-WAY OTHER THAN FOR RAILROAD PURPOSES AND FOR LOGGING ROADS ON THE OREGON AND CALIFORNIA AND COOS BAY REVESTED LANDS

SUBPART I—RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR OIL AND NATURAL GAS PIPELINES AND PUMPING PLANT SITES UNDER THE MINERAL LEASING ACT

COMMON CARRIER STIPULATION; OIL OR GAS PIPELINES

Section 244.63 is repealed and § 244.62 is amended to read as follows:

§ 244.62 *Common carrier stipulation; oil or gas pipelines.* Each application for an oil or gas pipeline right-of-way must include the following stipulation:

> The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

See Circ 1866

(R. S. 161, 453, 2478; 5 U. S. C. 22, 43 U. S. C. 2, 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 18, 1953.

[F. R. Doc. 53-4483; Filed, May 21, 1953; 8:45 a. m.]

Published in 18 F.R. 2953 of May 22, 1953

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Obsolete See Circ. 1860 - See Circ. 1895

[Circular 1848]

PART 250—PUBLIC SALES

Section 250.11 (b) (3) is amended to read as follows:

§ 250.11 *Action at close of bidding.*
* * *

(b) *Preference right of purchase; declaration of purchaser.* * * *

(3) Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among themselves upon a division of the tracts by subdivisions. In the absence of an agreement an equitable division of the land will be made taking into consideration such factors as (i) the equalizing of the number of acres which each claimant will be permitted to purchase, (ii) desirable land use, based on topography, land pattern, location of water, and similar factors, and (iii) legitimate historical use, including construction and maintenance of authorized improvements. If equitable considerations dictate, all of the subdivisions may be awarded to one of the claimants. Where only one subdivision is offered for sale and it adjoins the lands of two or more preference right claimants, it will, in the absence of equitable considerations requiring otherwise, be awarded to the applicant for the sale if he is a qualified person who properly asserts such a preference right within or prior to the 30-day preference-right period. The manager will make the award by declaring the appropriate claimant or claimants purchasers of the land.

(R. S. 2478; 43 U. S. C. 1201)

DOUGLAS MCKAY,
Secretary of the Interior.

June 4, 1953.

[F. R. Doc. 53-5154; Filed, June 10, 1953; 8:46 a. m.]

Published in 18 F.R. 3228 of June 11, 1953.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1849]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

SALE OF TIMBER ON O. & C. LANDS

1. Section 115.39 is amended to read:

§ 115.39 *Sale and appraisal.* (a) All timber to be sold under the provisions of the act of August 28, 1937 shall be appraised and in no case shall be sold at less than the appraised price. Such timber shall be sold to a responsible, qualified purchaser under the appropriate form of contract. All sales, other than those specified in paragraphs (b), (c) and (d) of this section, shall be made only after inviting competitive bidding through publication and posting and the submission of either sealed or oral bids.

(b) When the signing officer determines that it is unlikely that competitive interest exists, he may, in his discretion, without publishing, posting, or calling for bids, sell to or for the benefit of any one qualified purchaser, in any twelve consecutive month period, (1) timber on the revested and reconveyed lands not to exceed an estimated volume of 100 M bd. ft., or (2) other forest products on such land, the estimated appraised value of which is not more than the current average market value of 100 M bd. ft. of O. and C. timber.

(c) When thinning or sanitation cutting on small isolated tracts of mature or overmature timber in the judgment of the signing officer is required, he may sell the timber or other forest products to be removed for such purpose without publishing, posting, or calling for bids. There shall be no limitation on the number of such noncompetitive sales which may be made to one purchaser in any given twelve month period, but no such sale shall exceed an estimated volume of 100 M bd. ft. or, for forest products, an equivalent value.

(d) The signing officer may without publishing, posting, or calling for bids sell to the holder of an O. and C. timber sale contract up to 500 M bd. ft. of windthrown, insect-damaged, or fire-killed timber which is on or adjacent to the contract area when in his judgment such sale is in the public interest.

2. Paragraph (a) of § 115.42 is amended to read as follows:

§ 115.42 *Publication and posting.* (a) In addition to the advertisement described in § 115.41, notice of any proposed competitive sale must be published prior to the time of such sale at the expense of the Government. The notice of sale of timber on revested and reconveyed lands shall be published on the same day weekly for at least two consecutive weeks in a newspaper published within the marketing area in which the timber is located (as established by the Secretary of the Interior). In the case of salvage sales of wind-thrown, insect-damaged or fire-killed timber, the notice shall be published at least once and the sale shall be held not less than one week after such publication.

(Sec. 5, 50 Stat. 875)

ORME LEWIS,
Acting Secretary of the Interior.

JUNE 16, 1953.

[F. R. Doc. 53-5519; Filed, June 22, 1953; 8:46 a. m.]

Published in 18 F.R. 3584 of June 23, 1953

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Replaces 1720, 1768 & 1833

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Obsolete -
Replaced by 1981.
(1.158)

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter K—Military and Naval Service

Circular No. 1850

Part 181—Soldiers' and Sailors' Homestead Rights

PUBLIC LAND RIGHTS OF VETERANS OF WORLD WAR II, AND OF OTHER PERSONS ENTITLED TO CREDIT FOR SERVICE OF SUCH VETERANS

181.35 Statutory authority.
181.36 Credit for military or naval service in connection with homestead entries and home sites in Alaska; computation of service.
181.37 Evidence required of military or naval service.
181.38 Home sites in Alaska under act of May 26, 1934.
181.39 Residence and cultivation required on homesteads.
181.40 Credit for service of spouse of homestead entryman or entrywoman.
181.41 Homestead entry by surviving spouse, or minor orphan children, of a deceased veteran; evidence required.
181.42 Rights of minor orphan children, or widow, or heirs or devisees of deceased veteran.
181.43 Rights of minor veteran under the homestead laws.
181.44 Preference right of application on restoration or opening of surveyed public lands; preference right of settlement on restoration or opening of unsurveyed public lands in Alaska.
181.45 Cases in which preference-right provisions apply.
181.46 Cases in which preference-right provisions do not apply.
181.47 Preference right accorded to veterans in connection with certain reclamation lands.

AUTHORITY: §§ 181.35 to 181.47 issued under sec. 6, 45 Stat. 1061, sec. 5, 58 Stat. 748; 43 U. S. C. 617e, 283.

SOURCE: §§ 181.35 to 181.47 contained in Circular 1720, 13 F. R. 9564, except as noted following sections affected.

§ 181.35 *Statutory authority.* (a) The act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, grants to veterans of World War II, certain benefits in connection with the public lands, in addition to those conferred by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, 1186; 50 U. S. C. App. 560–572), as amended, and the regulations thereunder, contained in §§ 181.20 to 181.34.

(b) The benefits conferred by the act of 1940 in connection with the public lands relate for the most part to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service. The benefits granted by the act of 1944, as amended, are set forth in §§ 181.35 to 181.46.

§ 181.36 *Credit for military or naval service in connection with homestead entries and home sites in Alaska; computation of service.* (a) Any person who has served in the military or naval forces of the United States for a period of at least 90 days between September 16, 1940 and the termination of World War II[6] and is honorably discharged from the military or naval forces, and who subsequent to such discharge makes entry under the general homestead laws is entitled to have the period of such service, not exceeding two years, construed to be equivalent to residence and cultivation upon the land for the same length of time. Where application is made under the Alaska Home Site Act of May 26, 1934 (48 Stat. 869; 48 U. S. C. 461), the veteran is not required to cultivate the land and he may claim credit on the period of residence required by that act for the period of the military or naval service in like manner as is provided in the case of homestead entries. Any person who has served in the military or naval forces of the United States between September 16, 1940, and the termination of World War II will similarly be entitled to credit for two years' service without regard to the actual length of such service, (1) if such person is discharged on account of wounds received or disability incurred between those dates in the line of duty, or (2) if such person is regularly discharged and subsequently is furnished hospitalization or is awarded compensation by the Government on account of such wounds or disability.

(b) In computing the period of such service, the entrance of the veteran into the service will be considered as dating from the time of commencing active duty with the armed forces of the United States. Service with State troops or in the National Guard prior to the mustering of such troops into the service of the United States will not be included.

(c) An honorable discharge within the meaning of the act of September 27, 1944, as amended shall mean: (1) Separation from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions; or (2) release from active duty under honorable conditions to an inactive status whether or not in a reserve component, or retirement. Any person who obtains an honorable discharge as herein defined shall be entitled to the benefits of the act of September 27, 1944, even though such person thereafter resumes active military duty.

§ 181.37 *Evidence required of military or naval service.* A person claiming the benefit of military or naval service must file with his application, if a preference right of entry is claimed, and with his final proof, if the entry or Alaska homesite claim is not based on a preference right application, a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his respective branch of the service which shows clearly an honorable discharge as defined in § 181.36, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service.[7]

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[6] World War II ended with the Treaty of Peace with Japan which became effective April 28, 1952 (Proclamation No. 2974 of April 28, 1952, 17 F. R. 3813). By a series of extensions embodied in Public Laws 313, 368, 393 and 428, 82d Congress, the terminal date for computing credits for service during the war was extended to and including July 3, 1952.

[Footnote 6 was amended by Circular 1833, 17 F. R. 9183, Oct. 17, 1952.]

[7] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Reprint July 27, 1953, of Circular No. 1720, December 30, 1948, Circular No. 1768, October 12, 1950, and Circular No. 1833, October 13, 1952.

§ 181.38 *Home sites in Alaska under act of May 26, 1934.* While a veteran who establishes a home site claim in Alaska under the act of May 26, 1934 (48 Stat. 869; 48 U. S. C. 461) is not required to cultivate the land, he must as a basis for purchase, reside upon the land in a habitable house for the periods specified in § 181.39. Credit may be allowed for military or naval service in connection with these claims as set forth in §§ 181.40 to 181.43, relating to such credit in the case of homestead entries. In order to secure a preference right of application upon the opening or restoration of surveyed public land in Alaska, the veteran must file an application in accordance with § 64.7a of this chapter.

§ 181.39 *Residence and cultivation required on homesteads.* **(a) Before satisfactory final proof may be submitted on a homestead entry, a veteran will be required to comply with the homestead laws for a period of at least one year and for such additional period as, added to the term of the military or naval service, equals three years. During this period a veteran with 19 months' or more military service will be required to reside on the land at least seven months during the first entry year; with more than 12 and less than 19 months, he must reside on the land seven months during the first entry year and such part of the second year, as added to his excess over 12 months' service, will equal seven months, and must cultivate one-sixteenth of the area the second year; with seven and not more than 12 months, he must reside upon the land seven months during each of the first and second entry years, and cultivate one-sixteenth of the area the second year; with 90 days and less than seven months, he must reside upon the land seven months during each year for the first and second years, and such part of the third as, added to his service, will equal seven months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. A veteran will not be required to cultivate the land after he has met the requirements as set forth above:** ***Provided,*** **He promptly files notice of intention to submit proof. If, however, he delays the submission of proof beyond the period for which residence is required, the cultivation necessary during each annual cultivable season elapsing or reached before the submission of proof must be shown. He may apply for and receive a reduction in the area required to be cultivated, the same as other entrymen. In computing the required periods of residence, set forth above, there has been excluded the five months' absence each year from the land which may be taken by a homestead entryman in not more than two periods during each year after establishing residence, by giving notice to the manager as set forth in § 166.38 of this chapter. The veteran must have a habitable house on the land at the date of submitting homestead proof.**

(b) As the only requirement prescribed by section 2 of the act of April 28, 1904 (33 Stat. 527, 43 U. S. C. 213) as amended by the act of August 3, 1950 (64 Stat. 398; 43 U. S. C. Sup. 213) for the submission of final proof on an additional homestead entry for less than 160 acres subject to that section is the cultivation of the prescribed area for one year, as set forth in § 166.84 of this chapter (Circ. 1765, September 11, 1950), and as section 1 of the act of September 27, 1944 (58 Stat. 747) as amended by the act of May 31, 1947 (61 Stat. 123, 43 U. S. C., Sup. III, 279), granting to veterans of World War II credit for military or naval service not exceeding two years in connection with homestead entries, requires a veteran to meet the requirements of the homestead laws for a period of at least one year, a veteran in order to submit satisfactory final proof on such an additional homestead entry must meet the requirements of cultivation for the additional entry for a period of at least one year. Section 2 of the act of April 28, 1904, as amended, requires that cultivation of the land be continued until final proof is submitted. A qualified veteran or other person entitled to credit for military service who does not submit proof upon the expiration of the one year period may be allowed credit for the period of military service, not exceeding two years, for any subsequent required period of cultivation.

[Circ. 1768, 15 F. R. 6964, Oct. 18, 1950]

§ 181.40 *Credit for service of spouse of homestead entryman or entrywoman.* When the homestead entry is made by a husband or wife whose spouse is entitled to service credit under this part, such credit will, with the written consent of the spouse entitled thereto, be available to the husband or wife making the entry, in addition to any service credit to which he or she individually may be entitled. The total period for which service may be allowed may not, however, exceed 2 years.

§ 181.41 *Homestead entry by surviving spouse, or minor orphan children, of a deceased veteran; evidence required*—(a) *Survivors.* The surviving spouse or the minor children of any person who dies as the result of wounds received or disability incurred in line of duty while serving in the military or naval forces of the United States from September 16, 1940, to the termination of World War II, shall be entitled to credit for two years' residence and cultivation on a homestead entry. The surviving spouse or the minor children of any person who dies after performing service that would be a basis for credit under the provisions of § 181.36 shall be entitled to the amount of credit which would have been allowable to such person. The credit provided by this section shall be available to the surviving spouse, or, in the case of the death or marriage of the surviving spouse, to the minor child or children, upon application therefor by a guardian duly appointed and officially credited at the Department of the Interior. If both spouses have performed service for which credit is given, the surviving spouse, or, in the case of the death of both spouses, the minor children, may utilize the combined credit of both spouses. An entry made by such surviving spouse or guardian shall be subject to the requirement of residence and other compliance with the provisions of the homestead laws for the period for which credit cannot be claimed.

(b) *Prescribed evidence.* (1) In the case of a spouse of a deceased veteran, the prescribed evidence of military service of the veteran must be furnished together with a statement showing (i) the facts as to any homestead entry made by him, (ii) the date of the veteran's death, and (iii) that the spouse has not remarried.[8]

(2) Where a homestead entry is made in behalf of the minor child, or children, of a veteran, in addition to the prescribed evidence of military service of the veteran, satisfactory evidence must be furnished showing (i) the facts as to any homestead entry made by the veteran, (ii) the death of the veteran and the death or remarriage of the other parent, and (iii) the name, address, and age of each such minor. Evidence of death may be the testimony of two witnesses or a physician's certificate. Evidence of marriage may be a certified copy of the marriage certificate or the record of same, or testimony of two witnesses to the marriage ceremony.

§ 181.42 *Rights of minor orphan children, or widow, or heirs or devisees of deceased veteran.* **(a) Upon the death of a veteran entitled to claim credit for military or naval service as set forth in § 181.36, his rights under a homestead entry pass, if there is no widow, to his minor orphan child, or minor orphan children, if any. Patent under the entry will issue to such minor or minors, upon proof of such facts, without any proof of compliance with the law in the matter of residence, cultivation or improvements.**

(b) Upon the death of such a veteran, his rights under a homesite claim in Alaska, established under authority of the act of May 26, 1934, pass to his minor orphan child, or minor orphan children, if any. Patent under the claim will issue to them, upon proof of such facts, without any proof of compliance with the law in the matter of residence or improvements.

(c) Where the widow, heirs or devisees of a homestead entryman succeed to his rights under his entry, she or they, are not required to reside upon the land, but, in order to submit satisfactory proof, must continue cultivation for such period as, added to the term of the military or naval service, meets the requirements as to cultivation, as set forth in § 181.39. The widow, heirs, or devisees must also show that she, or they, are citizens of the

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[8] See footnote 7

United States, that the entryman complied with the law in all respects to the date of his death, and that there is a habitable house on the land.

(d) Where the heirs or devisees of a homesite claimant, in Alaska, succeed to his rights under his claim, they must, in order to perfect the claim by purchase under §§ 64.6 to 64.10 of this chapter, continue residence upon the land in a habitable house for such period as, added to the term of the military or naval service, meets the requirements as to residence, as set forth in § 181.39. In addition, they must show that they are citizens of the United States.

§ 181.43 *Rights of minor veteran under the homestead laws.* A person who has served or may serve in the military or naval forces of the United States for a period of at least 90 days between September 16, 1940, and the termination of World War II, has received an honorable discharge, as defined in § 181.36, and who is under 21 years of age, is entitled to the benefits, rights and privileges, with respect to homestead entries and applications, conferred by the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, and §§ 181.35 to 181.46.

§ 181.44 *Preference right of application on restoration or opening of surveyed public lands; preference right of settlement on restoration or opening of unsurveyed public lands in Alaska.* (a) From September 27, 1944, to September 26, 1954, inclusive, upon revocation of any order or withdrawal of surveyed public lands or the filing of a plat of survey or resurvey opening lands to application or entry, the order or notice taking such action will afford all persons of the classes entitled to credit under the provisions of §§ 181.35 to 181.45, a preferred right for a period of not less than ninety days, of application under the homestead or desert-land laws, the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended (59 Stat. 467; 43 U. S. C. 682a), or the Alaska Home Site Act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461), subject to the requirements of applicable law.

(b) During the above-mentioned period, on the revocation of any order of withdrawal of unsurveyed public lands in Alaska, persons entitled to the preference-right provisions mentioned above, will have a preference for a 90 day period before the lands are opened to settlement by the general public, to settle on such lands under the homestead laws and to make homesite settlement on such lands under the act of May 26, 1934.

§ 181.45 *Cases in which preference-right provisions apply.* The preference-right provisions extend, subject to the exceptions stated in the next section, to all cases where the lands are withdrawn or withheld from application under the public land laws, and by an order are opened or restored to such application. Thus, the preference-right provisions apply (a) where lands not subject to application become subject thereto by reason of the filing of township plats of survey or resurvey, (b) where lands are restored from an order of withdrawal or reservation, (c) for small-tract application only, where lands not classified for entry under the Small Tract Act of June 1, 1938, cited above, are so classified by the Secretary of the Interior on his own motion, (d) where lands are restored from segregation under the Carey Act, (e) where lands patented to a State under the Carey Act are reconveyed to the United States by the State, (f) where lands are reconveyed to the United States as a result of court proceedings or a demand for reconveyance, (g) where lands are conveyed to the United States by a State or a private owner in an exchange of lands, except where the acquired lands are situated in a national forest, a national park or an Indian reservation, or in any other reservation which precludes the filing of an application therefor under the public land laws, (h) where lands in national forests are opened under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), and (i) where Indian or other lands withheld from application are opened thereto.

§ 181.46 *Cases in which preference-right provisions do not apply.* The preference-right provisions do not apply where (a) lands were open to application on September 27, 1944, and they continue to occupy the same status, (b) lands are embraced in an entry which is canceled by contest, or by reason of the expiration of the statutory period, (c) lands are embraced in an entry or selection and under the law the lands become subject to application upon the filing of a relinquishment of the entry or selection in the land office, except lands in entries made under the act during the preference right period, which are relinquished before the expiration of the period, as to which excepted lands application may be made only by veterans during such period, (d) a revocation of an order of withdrawal is made in order to assist in a Federal land program other than one authorized by the homestead or desert-land laws or by the Small Tract Act of June 1, 1938, as amended, (e) lands are subject to prior existing valid settlement rights or preference rights conferred by existing laws or equitable claims subject to allowance and confirmation and (f) the lands are eliminated from national forests and are covered by the claims of holders of permits issued by the Department of Agriculture whose permits have been terminated only because of such elimination and who own valuable improvements on such lands (act of June 3, 1948, 62 Stat. 305; 43 U. S. C. 284).

§ 181.47 *Preference right accorded to veterans in connection with certain reclamation lands.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063), as amended by the act of March 6, 1946 (60 Stat. 36, 43 U. S. C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

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